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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 337

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, NATIONAL LIFE INSURANCE COMPANY, ET AL., APPELLANTS,

vs.

FRANK C. MOORE, COMPTROLLER OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED SEPTEMBER 9, 1947.

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[fol. 1]

IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION—FIRST DEPARTMENT

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Massachusetts Mutual Life Insurance Company, National Life Insurance Company, Penn Mutual Life Insurance Company, and Phoenix Mutual Life Insurance Company (Original Plaintiffs); and Aetna Life Insurance Company, The Prudential Life Insurance Company of America, The Union Mutual Life Insurance Company, and The Union Labor Life Insurance Company (Plaintiffs Added by Stipulation), Plaintiffs-Appellants,

against

FRANK C. MOORE, Comptroller of the State of New York, Defendant-Respondent

STATEMENT UNDER THE RULE

This action was commenced by the service of the summons and complaint on June 9, 1945. Defendant's answer was served on May 31, 1946.

The names of the original parties, and of the parties added by stipulation, are as stated in the above title.

[fol. 2] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

[Title omitted]

NOTICE OF APPEAL TO APPELLATE DIVISION

Please take notice that the plaintiffs hereby appeal to the Appellate Division, First Department, from a judgment dated October 24, 1946, and entered herein in the Office of the Clerk of the County of New York on October 25, 1946, [fol. 3] except so far as said judgment granted some of the relief prayed for in the complaint herein.

October 25, 1946.

Yours, etc., Ganson J. Baldwin, Attorney for Plaintiffs, 72 Wall Street, New York 5, New York.

To: Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for Defendant, and Clerk of the County of New York.

[fol. 4] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Massachusetts Mutual Life Insurance Company, National Life Insurance Company, Penn Mutual Life Insurance Company, and Phoenix Mutual Life Insurance Company (Original Plaintiffs); and Aetna Life Insurance Company, The Prudential Life Insurance Company of America, The Union Mutual Life Insurance Company, and The Union Labor Life Insurance Company (Plaintiffs added by Stipulation), Plaintiffs,

against

FRANK C. MOORE, Comptroller of the State of New York, Defendant

Present: Hon. Joseph A. Gavagan, Justice.

JUDGMENT APPEALED FROM—October 24, 1946

Upon reading and filing the defendant's notice of motion dated June 14, 1946, for judgment on the pleading dismissing the complaint, and upon reading and filing the complaint and answer herein, all in support of the motion; and upon the argument of said motion counsel for the defendant having conceded that the facts stated in the complaint are substantially correct, and the plaintiffs having thereupon [fol. 5] moved in open court for judgment for the relief sought in the complaint, and the Court having granted leave to make said motion, and the defendant having consented to the making of such motion in open court; and after hearing Abe Wagman, Esq., Assistant Attorney General, in behalf of the defendant, and Ganson J. Baldwin, Esq., in behalf of plaintiffs; and upon filing the opinion of the Court; it is

Ordered, adjudged and decreed as follows:

1. Plaintiffs' motion for judgment is granted to the extent hereinafter set forth, and in other respects denied. Defendant's motion for judgment on the pleadings is denied except as hereinafter stated.

2. The provisions of the Abandoned Property Law of the State of New York pertaining to life insurance companies (Chapter 1 of the Consolidated Laws), as amended (including Chapters 498 (Sec. 2) and 497 of the Laws of 1944,

and the statute which they amend, Chapter 697 of the Laws of 1943), are unconstitutional and void in so far as they apply to policies of life insurance issued for delivery outside of the State of New York by foreign life insurance companies.

3. This decree is without prejudice to the rights of any insurance company to assert, by action or otherwise, that said Abandoned Property Law, or any rule or regulation made thereunder, is unconstitutional and void in so far as [fol. 6] it may, or may purport to, deprive it of any total or partial defenses by reason of any statute of limitation or for any other reason, to any life insurance policies, or to any liability thereunder.

4. Except as hereinabove set forth, the provisions of said Abandoned Property Law pertaining to life insurance companies, in so far as said provisions are under attack in this action, are in all respects constitutional and valid.

5. The defendant Comptroller of the State of New York, his successors and agents, and all other persons acting or attempting to act under or by virtue of said Abandoned Property Law, are hereby enjoined and restrained from enforcing or attempting to enforce any of the provisions of said Abandoned Property Law in so far as such provisions are hereby decla ed to be unconstitutional and void, and from making or enforcing or attempting to enforce any rulings or regulations inconsistent herewith.

Enter,

J. G., J. S. C.

Archibald R. Watson, Clerk.

[fol. 7] In Supreme Court of New York, County of New York

Defendant's Notice of Motion to Dismiss, Etc.

Please take notice that upon the complaint and answer herein the defendant Frank V. Moore, Comptroller of the State of New York, will make a motion at Special Term, Part III of this Court on the 28th day of June, 1946, at 10:00 o'clock in the forenoon thereof, or as soon thereafter as counsel can be heard, for an order, under Rule 112

of the Rules of Civil Pratcice, dismissing the complaint and granting judgment in favor of the defendant, with costs, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, N. Y., June 14th, 1946.

Yours, Etc., Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Defendant, No. 80 Centre Street, Borough of Manhattan, New York 13, N. Y.

To: Ganson J. Baldwin, Esq., Attorney for Plaintiffs, 72 Wall Street, New York 5, N. Y.

[fol. 8] In Supreme Court of New York, County of New York

Summons

To the above named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service. In case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, June 8, 1945.

Ganson J. Baldwin, Attorney for Plaintiffs, 72 Wall Street, New York 5, N. Y.

[fol. 9] In Supreme Court of New York, County of New York

Complaint

The plaintiffs, by Ganson J. Baldwin, their attorney, for their complaint herein, allege, upon information and belief, as follows:

1

The defendant, Frank C. Moore, is the Comptroller of the State of New York, and has the duty of administering

the Abandoned Property Law and statutes hereinafter referred to, and thereunder would have the custody of the funds referred to therein and involved in this suit.

2

The plaintiffs are foreign mutual life insurance corporations licensed to do and doing business in the State of New York, and in most of the other States of the United States, and duly organized and existing under the laws of the following States, and having their principal places of business, known as "Home Offices", in the following cities in said States, respectively, and are herein referred to as "the companies", the names of the plaintiffs being herein abbreviated for convenience:

Company	*State*	*Home Office*
Connecticut Mutual	Connecticut	Hartford
Massachusetts Mutual	Massachusetts	Springfield
National Life	Vermont	Montpelier
Penn Mutual	Pennsylvania	Philadelphia
Phoenix Mutual	Connecticut	Hartford

[fol. 10]

3

The companies were all chartered in their home States nearly 100 years ago, and have been authorized to do business in this State for nearly 100 years for the most part, and in no instance for less than 50 years, and have done business in these States during such period, and for a great many years have done business in most of the other States of the United States pursuant to licenses granted by such States, and are continuing to do business in such States, and have subjected themselves to the laws of said States as to policies delivered therein, and are subject to the service of process therein and to being sued therein, and have made the deposits of cash and securities required by the laws of said States for protection of policyholders in said States and to secure compliance with the laws thereof.

4

Outstanding life insurance policies, including policies on the endowment plan, issued by the plaintiffs total in number over 1,500,000 and, in face amount, over $5,000,000,000,

issued over a long period of years throughout the United States, and the percentage thereof, in number and face amounts, issued through agents of the plaintiffs located in the State of New York (although such policies may not have been delivered in the State of New York) is about 17%.

5

The business of the plaintiffs, and other life insurance [fol. 11] companies, is conducted from their Home Offices, where their officers, records, and securities are situated.

6

Applications for policies are obtained by agents throughout the United States, and are sent to the Home Offices for consideration, and, if approved, the policies are written at the Home Offices and sent to the agents for delivery to the applicants.

7

Premiums are payable at the Home Offices, or, if paid to an agent, are forwarded to the Home Offices.

8

Notices as to premiums coming due, and as to policy loans, interest on policy loans, lapses, etc., are mailed to policyholders from the Home Offices.

9

Loans on policies are considered and made at the Home Offices, and loan checks are drawn at the Home Offices and mailed to the policyholders, or to the agents for delivery to the policyholders.

10

Claims under policies must be made at the Home Offices, under the terms of the policies, which provide that upon receipt at the Home Office of "due proof" of death, or other event, the company will pay, etc., and all claims are considered at the Home Offices, and, if allowed pursuant to [fol. 12] the terms of the policies, are paid by checks drawn at the Home Offices.

11

Income of the companies consists essentially of premiums and the return on their investments, and such income of each

company is its general property in which it has the beneficial ownership, and does not consist of deposits or trust funds and is not earmarked or held under any particular policy, but is used to pay expenses and claims and to provide reserves to pay future claims which may be properly paid in accordance with the terms of the policies or other contracts of the companies.

12

Assets of the companies consist principally of securities which are held at the Home Offices, and the Home Office buildings and equipment, and funds on deposit with banks pending investment and to meet current claims and expenses, and such assets of each company are its general property in which it has the beneficial ownership, and are not deposits, or trust funds and are not earmarked or held under any particular policy, but are general assets available for the payment of current expenses and claims and to provide for the payment of prospective obligations when they may become due under the terms of the policies and other contracts of the companies.

13

Liabilities of the companies are essentially expenses and valid claims properly presented, and a contingent pro- [fol. 13] spective liability for estimated future claims, taxes and expenses, represented in the companies' accounts by items designated as "reserves".

14

Policies issued by the companies contain provisions in substance as follows:

(a)

Payment is contingent upon furnishing "due proof" of death, or disability, or accidental death, or age, or survival, etc., to the company, and some policies require the surrender of the policy to the company. Nothing is payable under a policy until "due proof" is filed, and until the policy is surrendered when the policy so provides. Claims under policies are "payable at the Home Office" of a company.

(b)

Effectiveness of a policy usually depends upon its being "delivered and the first premium paid during the lifetime and good health of the insured", a provision which is usually contained in the policies or in the applications for insurance, copies of which are attached to policies when issued and made a part thereof.

(c)

Age of an insured, if understated, as it frequently is, may greatly reduce the liability of the company, which "shall be the amount of insurance which the premium would have purchased at the correct age". This is a standard provision [fol. 14] in New York and elsewhere (N. Y. Insurance Law, Sec. 155[1] [d]). The correct amount of a policy is not known until the date of birth is established by proof submitted at the time a claim is filed. For example, if an insured gave his age as 55, when he was actually 60, a company's liability on a $1,000 policy might be less than $800.

(d)

Suicide of the insured within 2 years after the issuance of a policy is not covered, and in such cases liability is limited to the premiums paid. This is a standard provision in New York and elsewhere (N. Y. Insurance Law, Sec. 155[2] [b]). Until a claim is filed and due proof submitted the companies cannot ascertain whether death was suicidal.

(e)

Beneficiaries may be either vested or subject to change, according to the terms of the policy.

(f)

Assignments of policies may be made.

(g)

Fraud or misrepresentations in an application for a policy may invalidate the policy.

(h)

War and military service may reduce or eliminate the liability of a company.

[fol. 15] (i)

Aviation activities of an insured may reduce or eliminate the liability of a company.

15

Impersonation, fictitious insureds and other frauds are encountered by the companies in the life insurance business and render policies unenforceable.

16

In many instances the reason that no claims have been made under certain policies may have been that the insureds or beneficiaries knew that the policies were unenforceable, or did not cover, for one or more of the reasons mentioned, or due to some other illegality or breach of condition.

17

Policies issued by the companies upon the lives of persons who appeared to reside in this State frequently have been and are delivered in some other States, and the premiums paid in other States.

18

Policies issued by the companies frequently have been and are applied for and obtained in another State by an employer, creditor, partner, husband, wife, parent, or other person, for his or her own benefit, upon the life of a person who appeared to reside in this State.

[fol. 16] 19

Every year thousands of persons holding policies issued by the companies, including vested beneficiaries and assignees, have changed their residences from one State to another, and they continue to do so.

20

It has never been customary in the insurance business to inquire into the legal residence of the persons on whose lives insurance is issued, and many such persons who have given addresses in this State may have been residents of other States, and the companies have no knowledge as

to such residences, and no means of determining such residences, even as to policies currently issued, since even if evidence of residence were required it would usually be inconclusive.

21

The laws of some of said States provide, among other things, that in suits against the companies in said States the fee of a claimant's attorney will be added to the amount recoverable, and that penalties ranging as high as 25% may be added to the claim for delay in payment, and such additional sums are included in judgments rendered in the courts of such States.

22

The companies are and always have been fully able to meet all of their obligations, and they maintain fully adequate reserves therefor, as required by the laws of the [fol. 17] States in which they are incorporated and by the laws of this State, and by the laws of the other States of the United States, and such reserves have been approved by the insurance officials and authorities of such States, and the business, accounts and assets of the companies have for many years and are constantly being supervised and audited by the insurance officials and authorities of such States.

23

The Abandoned Property Law of the State of New York, as enacted by Chapter 697 of the Laws of 1943, did not apply to foreign life insurance companies. It was amended by Chapters 497 and 498 (Sec. 2) of the Laws of 1944 to include foreign life insurance companies. The text of the statute, as so amended, insofar as it relates to life insurance companies, is Exhibit A attached hereto, the words added by said amendments being italicized and the words deleted by said amendments being in brackets. The text of Chapters 498 (Sec. 2) and 497 of the Laws of 1944, insofar as they relate to life insurance companies, is in Exhibits B and C, respectively, attached hereto. For convenience, the statute, as so amended, will be referred to as the "statute" or as the "Abandoned Property Law" (which is Chapter 1 of the Consolidated Laws of New York).

24

The Abandoned Property Law also relates to various subjects not pertinent to this case, such as escheat of real property in this State (Article II); bank deposits in this State (Article III); deposits with gas, electric and other [fol. 18] utility companies in this State (Article IV); deposits in courts of this State (Article VI); condemnation awards as to property in this State (Article X); deposits in Federal Courts located in this State, subject to approval by such Federal Courts (Article XII); and miscellaneous items such as the unclaimed surplus from the sale of pledged property in this State, and unclaimed personal property of persons in State institutions of this State, and unclaimed proceeds from the sale of stolen automobiles in this State, and from the sale of wrecked property in this State, and unclaimed wages payable by employers in this State (Article XIII); there being no attempt to legislate as to matters beyond the borders of the State except in respect to life insurance.

25

The statute, as it applies to life insurance, and the interpretations placed upon it by the defendant Comptroller of the State of New York, who is charged with its administration, and is enforcing it, and his instructions to the plaintiffs and other companies, are in substance as follows:

(a)

The statute provides that domestic and foreign life insurance companies (Sec. 103d) must pay annually to the Comptroller "any moneys held or owing" under policies "issued on the lives of residents of this state" (Sec. 700), when unclaimed for 7 years (with some exceptions as stated in Sec. 700).

[fol. 19] (b)

The Comptroller claims that "if at the time of the contract an insured was a resident of the State of New York the item" (the policy) "comes within the provisions of the statute", and that "a subsequent change of residence of the insured does not remove the item from the operation of this law", and that "the words 'issued on the lives of residents of this state' refer to the residence of the insured

at the time the contract was made and not to his residence at any later date".

(c)

The Comptroller claims that the words "any moneys held or owing" under a policy mean the amount which would be payable if a proper claim were presented, although no claim has been made at all, his instructions being as follows:

> "(c) Amount due. Such amount is the amount which would be payable if a proper claim were presented establishing, as the case may be, that:
>
> "(1) the insured survived the endowment period, or
>
> "(2) the insured died on the day he reached the maximum age of the mortality table" (which age varies from about 96 to 100, according to the mortality table used), "or
>
> "(3) the identity and right to payment of a person entitled to the proceeds of a policy when the fact of the insured's death has been proven to the insurer."

[fol. 20]

(d)

The statute requires that before payment to the Comptroller each company must file with him an annual report of such policies (Sec. 701), the preparation of which involves substantial work and expense.

(e)

The statute also requires that, before payment to the Comptroller, each company must publish a notice entitled "Notice of Names of Persons Appearing as Owners of Certain Unclaimed Property Held By (name of life insurance corporation)" in two successive weeks in a newspaper (designated by the Comptroller under Sec. 1410) in the county of the last-known address of "the holder" of each such policy, unless "such last-known address is outside of the state of New York" in which case the comptroller may designate any newspaper published in New York (Sec. 702). The notice must contain various details including "the names and last known addresses * * * of all persons appearing to be entitled to any abandoned property

amounting to ten dollars or more" (Sec. 702(3) (a)), and including a statement by the company "that such unclaimed moneys will be paid by it on or before" August 31st "to persons establishing to its satisfaction their right to receive the same" (Sec. 702(3) (c) (ii)), and a statement that between September 1st and 10th "such unclaimed moneys still remaining will be paid to the state comptroller and that it" (the insurance company) "shall thereupon cease [fol. 21] to be liable therefor" (Sec. 702(3) (c) (iii)). Proof of publication must be filed with the Comptroller (Sec. 702(4). The cost of publication "shall be charged pro rata against all abandoned property held or owing by" the insurance company "except abandoned property of individual amounts of less than ten dollars" (Sec. 1409).

(f)

The statute also provides that the statutes of limitation which may bar a claim against an insurance company on such a policy "shall not prevent any such money or property from being deemed abandoned property" and shall not be a defense in any suit by the Comptroller to compel the insurance company to report and pay the same to him (Sec. 1400).

(g)

The statute also provides that the "care and custody" of the payments is "assumed" by the state "for the benefit of those entitled to receive the same, and the state shall hold itself responsible for the payment of all claims established thereto pursuant to law, less any lawful deductions, which cannot be paid from the abandoned property fund" (Sec. 1404(1)(i)).

(h)

The statute also provides that upon making payment to the Comptroller the insurance company "shall immediately [fol. 22] and thereafter be relieved and held harmless from any or all liability for any claim" as to "any such abandoned property" (Sec. 1404(2)), and cannot be sued "for the recovery of abandoned property paid to the state comptroller" or "for interest thereon subsequent to the date of the report" (Sec. 1404(3)(a)), or for "damages alleged to have resulted from such payment" Sec. 1404(3)(c)).

(i)

The statute also provides, as to interest, that "no owner of abandoned property shall be entitled to receive interest on account of such abandoned property from and after the date a report of such abandoned property is made to the state comptroller" (Sec. 1405).

(j)

The statute also provides that claims to such "abandoned property" paid to the Comptroller may be filed with the Comptroller, who is given authority to determine the claims, subject to a review by the Supreme Court, Albany County (Sec. 1406(1)(a) and (b)). Claims "shall be paid out of the abandoned property fund and the comptroller shall not be liable in any action for any claim paid by him in good faith" (Sec. 1407). A service charge of 1%, but less than $3, is to be deducted by the Comptroller from all claims paid, and if the abandoned property fund is insufficient to pay all claims allowed, the legislature is to appropriate sufficient funds (Sec. 1407).

[fol. 23]

(k)

The statute also provides a penalty of $100 a day against each company for delay in reporting, etc., unless the penalty is waived by the Comptroller (Sec. 1412).

(l)

The Comptroller claims that the statute applies although actually nothing is payable under the terms of a policy when no claim or proof has been filed with the company; and although a policy may have been delivered in another State, and the premiums paid in another State; and although a policy may have been applied for and obtained in another State by an employer, creditor, partner, husband, wife or parent, or other person, for his or her own benefit, upon the life of a resident of this State; and although it is impossible to know what amount, if any, might be payable on a policy, if a claim and proofs were submitted, since the companies rarely have any knowledge or adequate information as to the correct age of the insured, or as to the cause of his death, or as to whether there was fraud or misrepresentation, or breach of conditions, etc., which

may determine what amount, if anything, would be payable on a policy upon the filing of a proper claim and proof, as required by the terms of the policies.

(m)

The Comptroller also claims that the statute applies retroactively to policies issued and delivered prior to the enactment of the statute, and regardless of whether the [fol. 24] contract was made in this State or some other State, and regardless of where the insured, or the beneficiary, or the assignee resides or resided at the time of or prior to the enactment of the statute.

26

The companies claim that the statute is unconstitutional and void as to foreign life insurance companies, under the Constitutions of the United States and of the State of New York, and the following provisions thereof:

(a)

Constitution of the United States

14th Amendment ("* * * Nor shall any State deprive any person of * * * property, without due process of law * * *.")

Art. I, Sec. 10 ("No State shall * * * pass any * * * Law impairing the Obligation of Contracts * * *.")

Art. I, Sec. 8 ("The Congress shall have Power * * * to regulate commerce * * * among the several States * * *" and to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers * * *.")

(b)

Constitution of the State of New York

Art. I, Sec. 6 ("No person shall be deprived of * * * property without due process of law.")

Art. I, Sec. 7(a) ("Private property shall not be taken for public use without just compensation.")

[fol. 25] Art. I, Sec. 11 ("No person shall be denied the equal protection of the laws of this State * * *.")

Art. III, Sec. 19 ("No claim against the State shall be audited, allowed or paid which, as between citizens of the State, would be barred by lapse of time.")

27

The companies claim that the statute is unconstitutional and void as to foreign life insurance companies by reason of the matters herein set forth, including the following:

(a)

The companies are contractors, i.e., insurers, not bankers, depositories, pledgees or bailees, and not debtors as to policies under which no claims and proofs of loss have been submitted, and the assets of the companies are their own property, and the statute attempts to take their property without due process of law and without just compensation, and attempts to impair the obligations of the policies issued by them.

(b)

The situs of the assets of the companies, and of any obligations which may become payable under policies issued by them, upon receipt of a proper claim and due proof required by the policies, are the States in which the plaintiffs are incorporated, not the State of New York, and the statute attempts to take without due process of law, and without just compensation, property the situs of which is outside of the boundaries of this State.

[fol. 26] (c)

The statute attempts to change the terms and impair the obligation of policies issued, made and delivered in other States, if the insurance was upon the life of a person who resided in this State when the policy was issued; and regardless of whether the policies were applied for and obtained by a resident of some other State such as an employer, creditor, partner, husband, wife or parent, or other person, for his or her own benefit, upon the life of a resident of this State; and by reason of such policies the statute attempts to take the property of the companies without due process of law and without just compensation.

(d)

The statute provides no means or due process for determining whether or not such persons were residents of New York when the policies were issued.

(e)

That the statute attempts retroactively to change the terms and impair the obligation of policies made, issued or delivered in this State, and in other States, prior to the enactment of the statute; and regardless of where the insured, beneficiary or assignee may have resided at the time of its enactment; and, upon so doing, to thereupon take the companies' property without due process of law and without just compensation.

[fol. 27] (f)

No moneys are "held or owing" under the policies issued by the companies unless and until proper claims and due proof are furnished to the companies, and the statute attempts to change and impair the obligations of the contracts and to dispense with the performance of the contracts by policyholders, and to create liabilities under the policies which do not exist, and to nullify many of said provisions thereof affecting the amount which may be payable thereunder; and, upon so doing, to thereupon take the companies' property without due process of law and without just compensation.

(g)

The statute attempts to, but does not, create a valid defense to suits upon the policies, or for interest thereon, which may be brought against the companies in other States, or even in this State, especially as to policies which were not delivered in this State, or which were issued prior to the statute, and, after the companies pay to the Comptroller, they may be subjected to the peril and expense of litigation in this State, or in other States, and to the fees of the claimants' attorneys when the companies are sued in some States, and to heavy penalties for delay in payment under the laws of some States, none of which can be recovered by the companies from this State, and in such suits in other States the

judgments may not be binding upon the Comptroller or upon this State, and the companies may be exposed to double liability, and, in any event, are deprived of the service charge of 1% or more charged by this State on all [fol. 28] funds paid to it under the statute, all of which is part of the scheme and effect of the statute to impair the obligation of the policies issued by the companies and to take their property without due process of law and without just compensation.

(h)

The statute compels the companies to publish notices waiving all statutes of limitation and defenses based thereon, and also requires the companies to pay to the Comptroller even though all claims under the policies may be barred by the statutes of limitation, thereby denying the companies the equal protection of the laws of this State (N. Y. Constitution, Art. I, Sec. 11).

(i)

The provision of the statute that this State shall pay claims of insureds, beneficiaries, et al., to the money to be paid by the companies to the Comptroller, regardless of whether the claims would be barred by the statutes of limitation, is in violation of the constitutional provision that "no claim against the State shall be audited, allowed or paid which, as between citizens of the State, would be barred by lapse of time" (N. Y. Constitution, Art. III, Sec. 19).

(j)

The cost of publication of the notices required by the statute is a taking of the companies' property without due process of law and without just compensation, and the provision in the statute that the company may charge such [fol. 29] cost against the policies is invalid and no protection in suits against the companies in other States, or even in this State, especially as to policies which were delivered in other States, or which were issued prior to the statute, and the effect thereof is to impair the obligation of the policies.

(k)

The statute attempts to put this State into the life insurance business on a national scale, with policyholders

throughout the United States, and even in foreign countries, and attempts to take over all of the functions of the companies as to such policies, after payment to the Comptroller, including the receiving of claims thereunder and the investigation, allowance, disallowance, and payment of claims thereunder, and awards this State a service charge of 1% or more, and deprives the companies of their right to do these things and to conduct their business with their members, and policyholders, in the manner lawfully agreed in the policies, and authorized by their charters, and prevents them from making adjustments of disputed claims, except at their peril, and virtually liquidates and takes over this part of the companies' business merely because the persons on whose lives the insurance was issued may have resided in this State many years ago when the policies were issued, and although such persons may never have had the slightest interest in the policies, and although the policies may have been delivered in other States, and although no one interested in the policies may have ever been in this State, or may have changed his residence there-[fol. 30] from years before the statute was enacted, all of which violates the constitutions of this State and of the United States, including the constitutional provisions referred to.

(l)

As to many policies heavy losses are necessarily incurred due to fraud, misrepresentation or unjust claims, and litigation thereof, etc., which losses must fall upon the companies and their members, their other policyholders, and, in turn, when no claim is made under a policy, possibly because the insured or beneficiary knew that the policy was unenforceable for some reason, the possible gain belongs to the company and its members, its policyholders, and the statute attempts to take such property and rights from them without due process of law and without just compensation.

(m)

The business of life insurance as conducted by the companies is interstate commerce, and the companies are engaged in interstate commerce with respect to the business of insurance to which the statute applies, and the statute is a burden upon and an interference with such interstate commerce.

(n)

The States of Michigan, Pennsylvania and Kentucky have enacted similar statutes which, although vague and ambiguous, apparently provide for the payment to those States of the proceeds of insurance policies as abandoned property, and the legislatures of other States are contemplating [fol. 31] similar legislation, and if the companies are to have any constitutional protection against the penalties and requirements of such statutes of the various States, including this State, it is essential that such statutes have a sound constitutional basis, since otherwise the companies will frequently have to pay two or more States, and will eventually have to pay again to the proper claimant or claimants, if any.

28

The Comptroller of the State of New York intends to enforce the statute in accordance with its terms, and in accordance with the interpretation which he has placed upon it as hereinbefore described, and to require the reports, publication and payments specified by the statute, amounting to many thousands of dollars, and he is proceeding to enforce said statute and threatens to continue to do so, against the plaintiff companies and other foreign insurance companies.

29

If the companies comply with the statute they will suffer heavy and irreparable loss, injury and damage, and if they fail to comply each company will be subject to a penalty of $100 a day under Sec. 1412 of such statute, and equitable relief, including injunctions against the enforcement of the statute and the penalties thereof during the pendency of this action and permanently, is the only remedy of the companies, there being no adequate remedy at law, and an actual controversy exists between the plaintiff companies and the defendant Comptroller in regard to the constitutionality and validity of said statute.

[fol. 32] Wherefore, the plaintiffs respectfully pray for judgment as follows:

A.

Declaring that the Abandoned Property Law of the State of New York, as amended, and especially Chapters 498

(Sec. 2) and 497 of the laws of 1944 of the State of New York, and the statute which they amend, Chapter 697 of the laws of 1943 of the State of New York, are unconstitutional and void insofar as they apply to the plaintiffs and other foreign life insurance companies, and that said statutes, in their entirety, and the provisions thereof if construed separately, violate the Constitutions of the United States and of the State of New York, and the provisions thereof as hereinbefore mentioned.

B

Declaring that the plaintiffs and other foreign life insurance companies are not required to obey said statutes, and declaring the rights and legal relations of the parties in regard thereto.

C

Enjoining and restraining the defendant Comptroller of the State of New York, his successors and agents, and all other persons acting or attempting to act under or by virtue of said statutes, from enforcing or attempting to enforce said statutes, or any of the provisions or penalties thereof, against the plaintiffs or other foreign insurance companies, and that such an injunction be granted during [fol. 33] the pendency of this action and be made permanent by the final judgment herein.

D

Granting such other and further relief as may be just and equitable.

Ganson J. Baldwin, Attorney for the Plaintiffs, 72 Wall Street, New York 5, N. Y.

(Verified by Ganson J. Baldwin on June 8, 1945.)

Exhibit "A" Annexed To Complaint

Text of the Abandoned Property Law of the State of New York, as amended, insofar as it applies to life insurance companies, being Chapter 697 of the Laws of 1943, as amended by Chapters 497 and 498 (Sec. 2) of the Laws of 1944, also known as Chapter 1 of the Consolidated Laws of the State of New York.

Note:

In Sec. 103 the words in italics were added, and the words in brackets were deleted, by Chapter 498 (Sec. 2) of the Laws of 1944 (which is Exhibit B), thereby making the statute apply to foreign life insurance corporations.

In Secs. 700, 701, 702 and 703, the words in italics were added, and the words in brackets were deleted, by Chapter 497 of the Laws of 1944 (which is Exhibit C).

[fol. 34] ARTICLE I—SHORT TITLE; DECLARATION OF POLICY; DEFINITIONS

§ 101. Short title.

This chapter shall be known and may be cited as the "Abandoned Property Law."

§ 102. Declaration of policy.

It is hereby declared to be the policy of the state, while protecting the interest of the owners thereof, to utilize escheated lands and unclaimed property for the benefit of all the people of the state, and this chapter shall be liberally construed to accomplish such purpose.

§ 103. Definitions.

* * * * * * *

(d) "[Domestic] Life insurance corporations" means any [authorized] insurer corporation [incorporated and] organized under [any] *the* laws of this state [having power] *or any foreign corporation authorized* to do either one or both kinds of insurance business authorized in paragraphs one and two of section forty-six of the insurance law, as amended from time to time.*

* Note:

The Insurance Law, Sec. 46, paragraphs 1 and 2, read as follows:

1. "Life insurance," meaning every insurance upon the lives of human beings and every insurance appertaining thereto. The business of life insurance shall be deemed to include the granting of endowment benefits; additional [fol. 35] benefits in the event of death by accident or accidental means; additional benefits operating to safeguard

the contract from lapse, or to provide a special surrender value, in the event of total and permanent disability of the insured; and optional modes of settlement of proceeds.

2. "Annuities," meaning all agreements to make periodical payments where the making or continuance of all or of some of a series of such payments, or the amount of any such payment, is dependent upon the continuance of human life, except payments made under the authority of paragraph one.

ARTICLE VII—UNCLAIMED LIFE INSURANCE FUNDS

§ 700. Unclaimed [domestic] life insurance corporation moneys.

1. The following unclaimed property held or owing by [domestic] life insurance corporations shall be deemed abandoned property:

(a) Any moneys held or owing by any [domestic] life insurance corporation which shall have remained unclaimed for seven years by the person or persons appearing to be entitled thereto under matured life insurance policies on the endowment plan issued on the lives of residents of this state.

(b) Any moneys held or owing by any [domestic] life insurance corporation which are payable under other kinds of life insurance policies issued on the lives of residents of this state where the insured, if living, would, prior to the thirty-first day of December next preceding the report re- [fol. 36] quired by section seven hundred one, have attained the limiting age under the mortality table on which the reserves are based, exclusive of

(i) any policy which has within seven years been assigned, readjusted, kept in force by payment of premium, reinstated or subjected to loan, or

(ii) any policy with respect to which such corporation has on file written evidence received within seven years that the person or persons apparently entitled to claim thereunder have knowledge thereof.

(c) Any moneys held or owing by any [domestic] life insurance corporation due to beneficiaries under policies is-

sued on the lives of residents of this state who have died, which moneys shall have remained unclaimed by the person or persons entitled thereto for seven years.

2. Any such abandoned property held or owing by a [domestic] life insurance corporation to which the right to receive the same is established to the satisfaction of such corporation shall cease to be deemed abandoned.

§ 701. Annual report of abandoned property.

1. On or before the first day of April in each year every [domestic] life insurance corporation shall make a verified written report to the state comptroller, which shall contain a true and accurate statement, as of the first day of January next preceding, of all abandoned property specified in section seven hundred, held or owing by it.

[fol. 37] 2. Such report shall set forth:

(a) The name and last known address of any person or persons appearing from the records of such [domestic] life insurance corporation to be entitled to receive any such abandoned property;

(b) The amount appearing from the records of such corporation to be due;

(c) The policy number and policy age of the insured;

(d) The date such abandoned property was payable;

(e) The names and last known addresses of each beneficiary appearing in the records of the insurer; and

(f) Such other identifying information as the state comptroller may require.

3. Such report shall be in such form and the abandoned property listed shall be classified in such manner as the state comptroller may prescribe. Names of persons appearing to be entitled to such property or of beneficiaries appearing in such report shall be listed in alphabetical order within each such classification.

4. In case any [domestic] life insurance corporation shall on the first day of January in any year neither hold nor owe any abandoned property specified in section seven hundred, it shall on or before the first day of April next succeeding

make a verified written report to the state comptroller so stating.

[fol. 38] §702. Publication of list of abandoned property

1. Within thirty days after making a report of abandoned property pursuant to the provisions of section seven hundred one, such life insurance corporation shall cause to be published a notice entitled: "Notice of names of persons appearing as owners of certain unclaimed property held by (name of life insurance corporation)."

2. Such notice shall be published once [in two newspapers published in the city or village] *a week for two successive weeks in a newspaper published in the county of the state* in which is located the last-known address of the holder of a policy under which such abandoned property is payable. [; provided, however, that if such address is in the city of New York, such publication shall be in two newspapers published in the county where such address is located. If there is only one newspaper published in any such city or village, such notice shall be published in such newspaper and in a newspaper published in the county where such address is located. If there are no newspapers published in such city or village, then such publication shall be in two newspapers published in the county where such address is located, or, if there is only one such newspaper published in such county, then in such newspaper, or, if there are no newspapers published in such county, then in a newspaper published in an adjacent county. All newspapers in which such notice shall be published shall be newspapers printed in the English language.] *If there are no newspapers published in such county then such notice shall be published in a newspaper* [fol. 39] *published in an adjacent county. If such last-known address is outside of the state of New York, such publication shall be in such newspaper published in this state as may be designated by the state comptroller. Such notices shall be published in newspapers printed in the English language.*

3. Such notice shall, in accordance with the classification prescribed by the state comptroller for the report pursuant to the provisions of section seven hundred one set forth:

(a) the names and last known addresses which were in such report, of all persons appearing to be entitled to any

such abandoned property amounting to ten dollars or more. Such names shall be listed in alphabetical order. [If, however, such life insurance corporation has reported abandoned property payable on policies whose holders' last known addresses are in more than one city or village or, in the case of New York city, more than one county, the names shall be listed alphabetically for each such city, village or county and such notice shall include only the names of the persons appearing to be entitled to abandoned property payable on policies whose holders' last known addresses are in such city, village or county;]

(b) such other information as the state comptroller may require; and

(c) a statement

(i) that a report of unclaimed amounts of moneys held or owing by it has been made to the state comptroller and [fol. 40] that a list of the names of the person or persons appearing from the records of such life insurance corporation to be entitled thereto is on file and open to public inspection at its principal office or place of business in any city, village or county where any such abandoned property is payable;

(ii) that such unclaimed moneys will be paid by it on or before the succeeding thirty-first day of August to persons establishing to its satisfaction their right to receive the same; and

(iii) that in the succeeding month of September, and on or before the tenth day thereof, such unclaimed moneys still remaining will be paid to the state comptroller and that it shall thereupon cease to be liable therefor.

4. Such life insurance corporation shall file with the state comptroller on or before the tenth day of May in each year proof by affidavit of such publication.

§703. Payment of abandoned property.

1. In such succeeding month of September, and on or before the succeeding tenth day thereof, every such [domestic] life insurance corporation shall pay to the state comptroller all abandoned property specified in such report, excepting such abandoned property as since the date of such report shall have ceased to be abandoned.

2. Such payment shall be accompanied by a statement setting forth such information as the state comptroller may [fol. 41] require relative to such abandoned property as shall have ceased to be abandoned.

§704. Life insurance departments of savings and insurance banks.

(Note: Not pertinent.)

§705. Unclaimed property held by superintendent of insurance after liquidation

(Note: Not pertinent.)

§706. Payment of abandoned property after liquidation by superintendent of insurance.

(Note: Not pertinent.)

Article XIV—General Provisions.

§1400. Statutes of limitations not a bar.

The expiration of any period of time specified by law, during which an action or proceeding may be commenced or enforced to secure payment of a claim for money or recovery of property, shall not prevent any such money or property from being deemed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver to the state comptroller any such abandoned property; and shall not serve as a defense in any action or proceeding by or on behalf of the state comptroller to compel the filing of any report or the payment or delivery of any abandoned property required by this chapter or to enforce or collect any penalty provided by this chapter.

[fol. 42] §1404. Assumption of liability by the state.

1. The care and custody • • •

(i) • • •of all abandoned property paid to the state comptroller pursuant to this chapter, is hereby assumed for the benefit of those entitled to receive the same, and the state shall hold itself responsible for the payment of all claims established thereto pursuant to law, less any lawful deductions, which cannot be paid from the abandoned property fund.

• • • • • • •

2. Any person, copartnership, unincorporated association or corporation making a payment of abandoned property to the comptroller shall immediately and thereafter be relieved and held harmless from any or all liability for any claim or claims which exist at such time with reference to such abandoned property or which may thereafter be made or may come into existence on account of or in respect of any such abandoned property.

3. No action shall be maintained against any person, copartnership, unincorporated association or corporation, or any officer thereof, for

(a) the recovery of abandoned property paid to the state comptroller pursuant to this chapter or for interest thereon subsequent to the date of the report of such abandoned property to the state comptroller pursuant to this chapter; * * * or

(c) damages alleged to have resulted from any such payment.

[fol. 43] §1405. Interest not to run after report of abandoned property.

Notwithstanding any other provision of law, no owner of abandoned property shall be entitled to receive interest on account of such abandoned property from and after the date a report of such abandoned property is made to the state comptroller pursuant to this chapter, whether or not he was entitled to interest on such property prior to such date. No claimant to abandoned property heretofore paid to the state comptroller shall be entitled to receive interest on account of such property, whether or not he was entitled to interest on such property prior to such payment.

§1406. Claims for abandoned property heretofore or hereafter paid to the state

1. (a) Claim may be filed with the state comptroller for any abandoned property heretofore paid to the state or hereafter paid to the state comptroller pursuant to this chapter * * * (Note: Part omitted is not pertinent to life insurance.)

(b) The comptroller shall possess full and complete authority to determine all such claims and shall forthwith send written notice of such determination to the claimant. At

any time within four months thereafter, such claimant may apply for a hearing and a redetermination of his claim. After an appropriate hearing on notice, before the comptroller or person duly designated by him, the comptroller shall make and serve his final determination, which alone shall be reviewable by application to the supreme court, Albany County, upon not less than ten days' notice to the comptroller.

[fol. 44] (c) The comptroller, or any person duly designated by him, is empowered to take testimony and proofs, under oath, upon such hearing, and shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents pertinent to such hearings.

* * * * * * *

§1407. Payment by state comptroller.

Any claim which is allowed by the state comptroller or ordered to be paid by him by a court of competent jurisdiction pursuant to the provisions of section fourteen hundred six, together with such costs and disbursements as may be allowed by the court, shall be paid out of the abandoned property fund and the comptroller shall not be liable in any action for any claim paid by him in good faith. There shall be deducted by the state comptroller from any claim allowed or the amount, other than costs and disbursements allowed by the court, of any claim ordered to be paid by him by a court of competent jurisdiction, one per cent, but in no event less than three dollars, from any such payment as a service charge, and such amount shall remain in the abandoned property fund.

If during any session of the legislature there are insufficient moneys in the abandoned property fund to pay all claims which have been allowed by the state comptroller or ordered to be paid by him by a court of competent jurisdiction, the state comptroller shall so certify to the legislature, which shall appropriate from the general fund to the aban- [fol. 45] doned property fund* an amount sufficient to pay such claims.

*Note:

Whenever the Abandoned Property Fund exceeds $750,000, the excess becomes the absolute property of the State

of New York, under the State Finance Law of New York, Sec. 95.

§1408. Verification.

Any report required to be verified by this chapter shall be verified, if made by a person by such person, if made by a partnership by one of the members thereof, if made by an unincorporated association or private corporation by the president or by a vice-president and one other principal officer thereof, and if made by a public corporation by the chief fiscal officer thereof.

§1409. Payment for publication

Any amount paid by a person to a newspaper or newspapers for any publication of names as required by this chapter shall be charged prorata against all abandoned property held or owing by such person at the time of such publication, except abandoned property of individual amounts of less than ten dollars.

§1410. Designation of newspapers

Any notice required by this chapter shall be published in such newspapers as shall be designated by the state comptroller, except that in no case shall a notice be published in a newspaper other than one specified in the section requiring such publication.

[fol. 46] §1411. Waiver of publication

The state comptroller may waive the publication of any notice required by this chapter, except a notice required by section fourteen hundred two, whenever in his opinion the cost of publishing such notice would be unreasonable in relation to the amount of abandoned property.

§1412. Penalty for failure to report or file

Any person failing to make any report or to file any affidavit required by this chapter shall forfeit to the people of the state the sum of one hundred dollars for each day such report or affidavit shall be delayed or withheld, except that the state comptroller may extend the time for making any such report or filing any such affidavit and may waive the payment of any penalty or part thereof provided for by this section.

§1413. Penalty for fraudulent returns

The making of a wilful false oath in any report required under the provisions of this chapter shall be perjury and punishable as such according to law.

§1501. Constitutionality

If any part, provision or section of this chapter, or the application of any such part, provision or section in any particular respect, shall be adjudged by any court of competent jurisdiction to be unconstitutional or ineffective in whole or in part, such judgment shall be confined in its operation to the particular provision or section or application directly involved in the controversy in which such judgment shall [fol. 47] have been rendered and shall not affect, impair or invalidate the remainder of such provisions or sections or their application in other respects; and to the extent that such provisions or sections are not unconstitutional or ineffective, they shall remain in full force and effect.

EXHIBIT "B" ANNEXED TO COMPLAINT

Chapter 498 of the Laws of New York

An Act to amend the abandoned property law, generally

Became a law April 1, 1944, with the approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

* * * * * * *

Section 2. Paragraphs (d) * * * of section one hundred three of such chapter (note: referring to Chapter 697 of the Laws of 1943) are hereby amended to read respectively as follows:

(d) "Life insurance corporation" means any insurer corporation organized under the laws of this state or any foreign corporation authorized to do either one or both kinds of insurance business authorized in paragraphs one and two of section forty-six of the insurance law, as amended from time to time.

* * * * * * *

[fol. 48] EXHIBIT "C" ANNEXED TO COMPLAINT

Chapter 497 of the Laws of New York

An Act to amend the abandoned property law, in relation to life insurance corporations

Became a law April 1, 1944, with the approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section seven hundred of chapter six hundred ninety-seven of the laws of nineteen hundred forty-three, entitled "An act in relation to escheated and abandoned property, constituting chapter one of the consolidated laws," is hereby amended to read as follows:

§ 700. Unclaimed life insurance corporation moneys.

1. The following unclaimed property held or owing by life insurance corporations shall be deemed abandoned property:

(a) Any moneys held or owing by any life insurance corporation which shall have remained unclaimed for seven years by the person or persons appearing to be entitled thereto under matured life insurance policies on the endowment plan issued on the lives of residents of this state.

(b) Any moneys held or owing by any life insurance corporation which are payable under other kinds of life insurance policies issued on the lives of residents of this [fol. 49] state where the insured, if living, would, prior to the thirty-first day of December next preceding the report required by section seven hundred one, have attained the limiting age under the mortality table on which the reserves are based, exclusive of

(i) any policy which has within seven years been assigned, readjusted, kept in force by payment of premium, reinstated or subjected to loan, or

(ii) any policy with respect to which such corporation has on file written evidence received within seven years that the person or persons apparently entitled to claim thereunder have knowledge thereof.

(c) Any moneys held or owing by any life insurance corporation due to beneficiaries under policies issued on the lives of residents of this state who have died, which moneys shall have remained unclaimed by the persons or persons entitled thereto for seven years.

2. Any such abandoned property held or owing by a life insurance corporation to which the right to receive the same is established to the satisfaction of such corporation shall cease to be deemed abandoned.

Section 2. Subdivision one of section seven hundred one of such chapter is hereby amended to read as follows:

1. On or before the first day of April in each year every life insurance corporation shall make a verified written report to the state comptroller, which shall contain a true and [fol. 50] accurate statement, as of the first day of January next preceding, of all abandoned property specified in section seven hundred, held or owing by it.

Section 3. Paragraph (a) of subdivision two of section seven hundred one of such chapter is hereby amended to read as follows:

(a) The name and last known address of any person or persons appearing from the records of such life insurance corporation to be entitled to receive any such abandoned property;

Section 4. Subdivision four of section seven hundred one of such chapter is hereby amended to read as follows:

4. In case any life insurance corporation shall on the first day of January in any year neither hold nor owe any abandoned property specified in section seven hundred, it shall on or before the first day of April next succeeding make a verified written report to the state comptroller so stating.

Section 5. Section seven hundred two of such chapter is hereby amended to read as follows:

§ 702. Publication of list of abandoned property

1. Within thirty days after making a report of abandoned property pursuant to the provisions of section seven hundred one, such life insurance corporation shall cause to be

published a notice entitled: "Notice of names of persons appearing as owners of certain unclaimed property held by (name of life insurance corporation)."

[fol. 51] 2. Such notice shall be published once a week for two successive weeks in a newspaper published in the county of the state in which is located the last-known address of the holder of a policy under which such abandoned property is payable. If there are no newspapers published in such county then such notice shall be published in a newspaper published in an adjacent county. If such last-known address is outside of the state of New York, such publication shall be in such newspaper published in this state as may be designated by the state comptroller. Such notices shall be published in newspapers printed in the English language.

3. Such notice shall, in accordance with the classification prescribed by the state comptroller for the report pursuant to the provisions of section seven hundred one, set forth:

(a) the names and last known addresses which were in such report, of all persons appearing to be entitled to any such abandoned property amounting to ten dollars or more. Such names shall be listed in alphabetical order.

(b) such other information as the state comptroller may require; and

(c) a statement

(i) that a report of unclaimed amounts of money held or owing by it has been made to the state comptroller and that a list of the names of the person or persons appearing from the records of such life insurance corporation to be entitled thereto is on file and [fol. 52] open to public inspection at its principal office or place of business in any city, village or county where any such abandoned property is payable;

(ii) that such unclaimed moneys will be paid by it on or before the succeeding thirty-first day of August to persons establishing to its satisfaction their right to receive the same; and

(iii) that in the succeeding month of September, and on or before the tenth day thereof, such unclaimed moneys still remaining will be paid to the state comp-

troller and that it shall thereupon cease to be liable therefor.

4. Such life insurance corporation shall file with the state comptroller on or before the tenth day of May in each year proof by affidavit of such publication.

Section 6. Subdivision one of section seven hundred three of such chapter is hereby amended to read as follows:

1. In such succeeding month of September, and on or before the succeeding tenth day thereof, every such life insurance corporation shall pay to the state comptroller all abandoned property specified in such report, excepting such abandoned property as since the date of such report shall have ceased to be abandoned.

Section 7. This act shall take effect June first, nineteen hundred forty-four.

[fol. 53] In Supreme Court of New York, County of New York

Answer

The defendant above named for his answer to the complaint in the above-entitled action:

I. Denies that he has any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint numbered "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," "13," "14" (including subdivisions "a"-"i"), "15," "16," "17," "18," "19," "20," "21" and "22."

II. Denies each and every allegation contained in the paragraphs of the complaint numbered "26" (including subdivisions "a"-"b"), "27" (including subdivision "a"-"n") and "29."

III. Denies each and every allegation contained in the paragraph of the complaint numbered "23" except that he admits that the statutes therein mentioned were enacted and amended as is shown on the statute books of the State of New York.

IV. Denies each and every allegation contained in the paragraph of the complaint numbered "24" except that he

admits that the Abandoned Property Law of the State of New York (Chap. 697 of the Laws of 1943 as amended) pertains to and includes abandoned funds of various types as set forth in said statute.

V. Denies each and every allegation contained in the paragraphs of the complaint numbered "25" (including subdivisions "a"-"m") and "28" except that he admits [fol. 54] that it is the duty and the intention of the defendant to administer the Abandoned Property Law of the State of New York as the same is contained and set forth in the statute books of the State of New York.

Wherefore, the defendant demands judgment that the complaint herein be dismissed with costs.

Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Defendant, Office & P. O. Address, No. 80, Centre Street, Borough of Manhattan, New York 13, N. Y.

(Verified by Archibald N. Galloway on May 28, 1946.)

In Supreme Court of New York, New York County, Special Term, Part One

[Same Title]

Opinion—Emphasis in Original

Gavagan, J.:

This motion by the Attorney General of the State of New York, for judgment on the pleadings dismissing the com- [fol. 55] plaint, presents the question of the constitutionality of Article VII of the Abandoned Property Law in so far as it purports to apply to foreign life insurance companies licensed to do business in this state, as well as other constitutional questions affecting domestic as well as foreign life insurance companies.

The action is brought by five life insurance companies, incorporated in other states but doing business here pursuant to license, against the Comptroller of the State of New York. It seeks (1) a declaratory judgment that Article VII of the Abandoned Property Law is unconstitutional and

void as to plaintiffs, and (2) an injunction against attempts by the Comptroller to enforce the statute against them.

The Abandoned Property Law provides for the turnover to the state of property unclaimed by the owners thereof for such a length of time as to justify a presumption of abandonment. A mode of procedure is set up whereby the state takes such property into its custody and utilizes the same or its proceeds for the benefit of all the people until claim is made by the true owners. The first attempt to bring life insurance policies within the statute was in 1939 (Chapter 923 of the Laws of 1939). The statute was expressly limited to domestic companies. An action was commenced by New York Life Insurance Company for judgment declaring the 1939 law unconstitutional. The suit was withdrawn, however, after the 1940 Legislature had amended the statute by restricting its application to policies "issued on the lives of residents of this state" (Ch. 602, L. 1940). In 1944 the statute was amended so as to apply also to foreign life insur- [fol. 56] ance companies authorized to issue policies of life insurance or annuities under "paragraphs one and two of section forty-six of the insurance law" (Chap. 497, 498, L. 1944). In 1945 the Legislature passed a bill eliminating foreign companies from the scope of the statute. However, the bill also made the statute applicable to all policies issued by domestic companies by removing the existing restrictions to policies issued upon the lives of residents, adopted in 1940. The bill was vetoed by the Governor, perhaps because of this proposed extension of the statute to all policies issued by domestic companies.

Article VII of the Abandoned Property Law deals with "unclaimed life insurance funds". It consists of eight sections, numbered 700 to 707 inclusive. Section 700, defining what shall be deemed abandoned property, reads as follows:

"§700. Unclaimed life insurance corporation moneys

1. The following unclaimed property held or owing by life insurance corporations shall be deemed abandoned property:

(a) Any moneys held or owing by any life insurance corporation which shall have remained unclaimed for seven years by the person or persons appearing to be entitled thereto under matured life insurance policies

on the endowment plan issued on the lives of residents of this state.

(b) Any moneys held or owing by any life insurance corporation which are payable under other kinds of life [fol. 57] insurance policies issued on the lives of residents of this state where the insured, if living, would, prior to the thirty-first day of December next preceding the report required by section seven hundred one, have attained the limiting age under the mortality table on which the reserves are based, exclusive of

(i) any policy which has within seven years been assigned, readjusted, kept in force by payment of premium, reinstated or subjected to loan, or

(ii) any policy with respect to which such corporation has on file written evidence received within seven years that the person or persons apparently entitled to claim thereunder have knowledge thereof.

(c) Any moneys held or owing by any life insurance corporation due to beneficiaries under policies issued on the lives of residents of this state who have died, which moneys shall have remained unclaimed by the person or persons entitled thereto for seven years.

2. Any such abandoned property held or owing by a life insurance corporation to which the right to receive the same is established to the satisfaction of such corporation shall cease to be deemed abandoned."

Section 701 provides that on or before each April first every life insurance company shall make a report to the Comptroller of property deemed abandoned by virtue of the provisions of section 700. Section 702 requires each company, within thirty days after its report to the Comptroller, [fol. 58] to publish a list of persons appearing to be the owners of unclaimed property held by the company. The list is to be accompanied by a statement that moneys unclaimed by the succeeding thirty-first day of August will be paid to the State Comptroller and that the company shall thereupon cease to be liable therefor. Section 703 directs each company to pay to the Comptroller, in September, all property listed in its annual report as abandoned, except such property as shall have ceased to be abandoned since the

date of the report. Sections 704, 705 and 706 are immaterial here. Section 707, added by chapter 452 of the Laws of 1946, declares that "any life insurance corporation which has paid to the state comptroller moneys deemed abandoned property pursuant to the provisions of this article may make payment to any person entitled to all or any part thereof and shall thereby acquire all of the rights of such person to payment by the state comptroller."

Article XIV of the Abandoned Property Law, entitled "General Provisions", contains a number of sections (1400 to 1413 inclusive) applicable to all the preceding articles, including Article VII. Section 1400 provides that the expiration of the statute of limitations applicable to actions or proceedings against the insurance companies shall not prevent the claims against the companies from being deemed abandoned and shall not be a defense in a proceeding by the Comptroller to compel the filing of a report or the payment of the abandoned property to him. Section 1401 obligates the Comptroller to keep a public record of the names [fol. 59] and addresses of the persons appearing to be entitled to the abandoned property. Section 1402 requires the Comptroller to publish in October of each year a statement of the abandoned property delivered or paid over to him, with the names and last-known addresses of the persons appearing to be entitled thereto, together with a statement that a claim for the property should be filed with the Comptroller and that a service charge of one per cent, but not less than $3, must be retained by the Comptroller in connection with each claim allowed or established. Section 1403 is not material here. Section 1404 declares that the care and custody of the abandoned property paid to the state is "hereby assumed for the benefit of those entitled to receive the same, and the state shall hold itself responsible for the payment of all claims established thereto pursuant to law, less any lawful deductions, which cannot be paid from the abandoned property fund". The section further relieves any company paying abandoned property to the Comptroller from all liability with reference to such property and provides that no action shall be maintained against such company for the recovery of the property or for damages alleged to have resulted from such payment. Section 1405 declares that no owner of abandoned property shall be entitled to receive interest after the date of the report of abandoned property to the Comptroller. Section 1406 pro-

vides for the filing of claims to abandoned property with the Comptroller and vests in him full authority to determine claims, subject to the power of the Supreme Court to review [fol. 60] his determination. Section 1407 requires the Comptroller to deduct from any allowed claim one per cent thereof, but not less than $3, as a service charge. It also provides for additional appropriations by the legislature when necessary to keep the abandoned property fund sufficient to pay allowed claims. The remaining sections of Article XIV are unimportant for the purposes of this motion, except perhaps section 1412, which imposes a penalty of $100 upon any person failing to file a report required by the statute, for each day that the report is delayed or withheld.

For the purposes of the present motion the allegations of the complaint must be deemed true. That pleading alleges that plaintiffs are incorporated in states other than New York and "for a great many years have done business in most of the other States of the United States pursuant to licenses granted by such States". It further appears from the complaint that the business of plaintiffs is conducted from their Home Offices, located in the states of their incorporation, where their officers, records and securities are situated; that applications for policies are obtained by agents and sent to the Home Offices for consideration, and if approved, that the policies are written at the Home Offices and sent to the agents for delivery to the applicants. Premiums are payable at the Home Offices, or, if paid to agents, are forwarded to the Home Offices. Notices as to premiums coming due and as to policy loans, interest on policy loans, lapses, etc., are mailed from the Home Offices. Loans on policies are considered and made at the Home Offices, and loan checks are drawn at the Home Offices and mailed to the [fol. 61] policyholders or to agents for delivery to policyholders. "Claims under policies must be made at the Home Offices, under the terms of the policies, which provide that upon receipt at the Home Office of 'due proof' of death, or other event, the company will pay, etc., and all claims are considered at the Home Offices, and, if allowed pursuant to the terms of the policies, are paid by checks drawn at the Home Offices."

The complaint further alleges that "policies issued by the companies upon the lives of persons who appeared to reside in this State frequently have been and are delivered

in some other State, and the premiums paid in other States"; that "policies issued by the companies frequently have been and are applied for and obtained in another State by an employer, creditor, partner, husband, wife, parent, or other person, for his or her own benefit, upon the life of a person who appeared to reside in this State"; and that "every year thousands of persons holding policies issued by the companies, including vested beneficiaries and assignees, have changed their residences from one State to another, and they continue to do so."

In the light of these allegations, plaintiffs contend that the legislature of this state had no jurisdiction or power to direct a turnover to the state of "abandoned" claims upon insurance policies issued by them on the lives of New York residents. It is important to note that the statute, as it is worded, is not limited to policies issued or delivered in New York State, as part of the business which plaintiffs are licensed to do here. Article VII is directed at all "life insurance corporations", a term defined in section 103 as [fol. 62] including "any foreign corporation authorized to do either or both kinds of insurance business authorized in paragraphs one and two of section forty-six of the insurance law as amended from time to time". Under this statute, any foreign company, authorized to do a life insurance or annuity business here, is obliged to turn over to the state the amounts of all "abandoned" insurance policies "on the lives of residents of this state". It matters not that the person on whose life the policy was written may never have had any interest in the proceeds of the policy (the policy may have been applied for by a creditor or relative of the insured). It is immaterial that the policy may have been applied for, written and delivered outside the State of New York. It is of no consequence that the policy may be payable outside the state or that the person entitled to payment, and whose failure to make claim is deemed an abandonment under the statute, may never have resided in the state. All that is necessary is that the policy insure the life of a New York resident.

It would seem to be obvious that the legislature of this state would be without jurisdiction or power to compel foreign insurance companies, *merely because they are licensed to do business here*, to turn over to the state the amounts of all unclaimed insurance policies, *wherever written and delivered, and wherever and to whomsoever payable.* Nor

would restriction of the statute to policies on the lives of New York residents alter the legal situation, irrespective of the date used for determining the insured's residence, for the residence of the person whose life is insured is not the proper criterion, by itself, for determining the situs of [fol. 63] a claim upon a policy. The policy may have been obtained on the application of someone other than the insured and it may be payable to someone other than the insured. As to policies resulting from business done outside the state and having no relation to the license to do business here, the state is without jurisdiction. In U. S. Mortgage & Trust Co. v. Ruggles, 258 N. Y. 32, the Court of Appeals declared (p. 40): "The State may not constitutionally regulate or interfere with the acts of foreign corporations outside its limits nor with the liberty of parties to take out contracts of insurance whenever they desire and collect the proceeds thereof. * * * the New York statute * * * could reach only business transacted within the State". In Mutual Life Ins. Co. v. Cohen, 179 U. S. 262, the United States Supreme Court ruled that a New York statute, prohibiting the lapsing of policies for nonpayment of premiums or interest unless a notice had been mailed prior to the due date, would be unconstitutional if it applied to policies issued in other states by foreign insurance companies. The court said (p. 269): "That the legislature of New York could not control companies not organized under its laws as to their business transacted in other States is too clear for argument". In Alaska Packers v. Industrial Accident Commission, 294 U. S. 532, the Supreme Court declared that (p. 540): "The due process clause denies to a state any power to restrict or control the obligation of contracts executed and to be performed without the state, as an attempt to exercise power over a subject matter not within its consti- [fol. 64] tutional jurisdiction". In Home Ins. Co. v. Dick, 281 U. S. 397 the same court stated (p. 410) that "It (the state) may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them".

The determination of the situs of intangibles depends on a "common sense appraisal of the requirements of justice and convenience" in the particular situation involved (Severnoe Securities Corp. v. L. & L. Ins. Co., 255 N. Y. 120, 123 [Cardozo, Ch. J.]): "The situs of intangibles is in truth a legal fiction, but there are times when justice or convenience

requires that a legal situs be ascribed to them. The locality selected is for some purposes, the domicile of the creditor, for others, the domicile or place of business of the debtor, the place, that is to say, where the obligation was created or was meant to be discharged, for others, any place where the debtor can be found. * * * at the root of the selection is generally a common sense appraisal of the requirements of justice and convenience in particular conditions". Applying this test to the case under consideration, we find that the criterion for determining situs contained in the Abandoned Property Law, viz., the residence of the insured, is not one which satisfies the requirements of justice and convenience. The primary domicile of the debtor (the state of incorporation of the insurance company), the domicile of the creditor (the person entitled to the proceeds of the policy), the place where the contract of insurance was made, the physical location of the policy itself, and the place where the contract embodied in the policy is to be performed,— [fol. 65] these are all ignored in the statute presently under attack. That the selection of the residence of the insured as the sole criterion of situs for purposes of transferring to the state the amounts of all abandoned policy claims does not satisfy the requirements of justice and convenience must be too evident to need elaboration. States where the contracts of insurance were made, where the debtor insurance companies are incorporated, and/or where the persons entitled to the proceeds of the policies reside, certainly have better and stronger rights to assert jurisdiction over the abandoned policy claims. It is neither just nor convenient, as far as the debtors and creditors on the policies are concerned, for the State of New York to compel foreign insurers to turn over to it proceeds of policies of insurance which have no connection whatsoever with the business done by them in New York and which bear no relationship whatever to this state, except for the residence of the persons on whose lives the policies were issued. As a practical matter, hardship would be likely to result to the foreign insurers if they were obliged to yield to New York as to such policies. Compliance with the New York statute might well subject such foreign companies to double liability, complete or partial. Other states with better rights to exercise jurisdiction may pass similar statutes, and it would be no defense to the companies, as against attempts to enforce those statutes, that they had complied with the laws of New York, whose

claim to jurisdiction rested solely on the insured's residence there. Indeed, the complaint alleges that the States of Michigan, Pennsylvania and Kentucky have already enacted [fol. 66] similar statutes and that the legislatures of other states are contemplating analogous legislation. Prior to the 1946 amendment, which added section 707 to the Abandoned Property Law, plaintiffs would also have been subject to the risk that persons entitled to the proceeds of the "abandoned" insurance policies might start suits in other states whose courts would refuse to recognize as valid the provision of section 1404 which purports to relieve an insurer making payment to the New York Comptroller from liability to anyone in respect of the abandoned property turned over to the Comptroller. The 1946 amendment gave the companies who had complied with the statute the right to acquire the claimants' rights against the state, by paying the claimants the amounts of their claims. Since a "service" charge of 1% (and not less than $3) must be deducted when a claim is paid by the state, the insurance companies, even if they went to the trouble of making payments to claimants from their own funds after they had already made equivalent payments to the Comptroller, would be obliged to suffer a loss of 1% of their second payment, as well as of all interest thereon to the time they received partial reimbursement from the state. It is, therefore, apparent that the amendment leaves the companies exposed to some risk of loss, and perhaps double liability, even if they comply with our statute.

Nearly all life insurance companies do business in many states, and many do business in almost every state. To allow every state in which they do business to claim the right to custody of the amount of every "abandoned" policy [fol. 67] ever issued by them anywhere would result in chaos. Use of the residence of the insured as the determinant of jurisdiction would not be either logical or practical—not only because the insured's residence is immaterial under any recognized rule for ascertaining situs, but also for the reason that the residence of the insured is unknown to the insurer, in many instances at least (the complaint, which must be regarded as true on this motion, so alleges).

The authorities cited by the Attorney General as supporting the validity of the statute have no applicability to a legislative attempt to compel foreign corporations to turn

over to the state unclaimed funds or property *which had their origin in business transacted outside the state.* In Anderson National Bank v. Luckett, 321 U. S. 233, the court held that the State of Kentucky had the right to compel the turnover to it of unclaimed bank deposits in a national bank *located in Kentucky* because (p. 241): "The deposits are debtor obligations of the bank, *incurred* and to be performed *in the state where the bank is located* and hence are subject to the state's dominion" as (p. 248) "a part of the mass of property within the state whose transfer and devolution is subject to state control." In Security Bank v. California, 263 U. S. 282, in upholding a similar statute of California dealing with savings bank deposits, the court emphasized that (p. 283) "the bank is a California corporation and has its only place of business there," adding (p. 285): "The unclaimed deposits are debts due by a California corporation with its place of business there. * * * The debts arose out of contracts made and to be performed there. * * * The deposits are clearly intangible [fol. 68] property within the state. Over this intangible property the state has the same dominion that it has over tangible property." In Provident Institution for Savings v. Malone, 221 U. S. 660, a Massachusetts savings bank attacked as unconstitutional a Massachusetts statute. As in the Anderson and Security Bank cases, *supra*, no question of a legislative attempt to exercise extra-territorial jurisdiction was presented. The situs of the claims of depositors against the Massachusetts savings bank was clearly in Massachusetts where the deposits were made and payable. Brooklyn Borough Gas Co. v. Bennett, 154 Misc. 106, likewise involved no question of the right of a state to direct the turnover to it of property outside the state. The statute there involved related to deposits with public utility companies within the state and the action was brought by a domestic company. In holding the statute valid the court declared that (p. 114): "The jurisdiction of a State *over property within its borders* under circumstances indicating an abandonment by the owners has been repeatedly sustained" (italics supplied). In United States v. Klein, 303 U. S. 276, the statute dealt only with deposits in courts (p. 278, footnote) "in and for any district within this Commonwealth," and in a later phase of the same litigation (106 Fed. [2d] 213, certiorari denied, 308 U. S. 618) the court expressly stated (p. 215) that "in order to

give jurisdiction to the state courts the *res* must have its situs within the territorial limits of the state."

That the "abandoned" property must be actually or constructively within the territorial limits of the state appears to be recognized by the Attorney General in Point I [fol. 69] of his brief. He contends, however, that the domestic agencies of the foreign plaintiffs are to be treated as domestic corporations and that, therefore, "the situs of the debt or claim is in this State" (Point III, Attorney General's brief). The authorities cited do not support the proposition that a foreign corporation, licensed to do business in this state, is to be treated as a domestic corporation *in connection with business transacted outside the state and having no relation to its authority to do business here.* In Comey v. United Surety Company, 217 N. Y. 268, the holding was merely that a foreign corporation, licensed to engage in business in New York, and possessing a representative to receive service here, was not to be deemed absent from the state and could therefore avail itself of the statute of limitations as if it were a domestic company. Obviously this decision is not in point here. Although the court did say that *"for many purposes"* a foreign insurance company transacting business here "must be treated as a domestic insurance company and as domiciled in this state," it did not go so far as even to suggest that for the purpose of a taking over by the state of abandoned claims *arising out of business transacted outside the state* the foreign corporate debtor was to be treated as domiciled in this state. In Morgan v. Mutual Benefit Life Ins. Co., 189 N. Y. 447, cited in the Comey opinion, *supra,* and also in the Attorney General's brief, the policy had been issued in New York, to a resident of New York, by a foreign life insurance company authorized to do business here. In an action brought by the legal representatives of a pledgee of the policy to establish an equitable lien thereon, it was held that service [fol. 70] by publication upon non-resident children of the deceased insured was good because the action sought to enforce a lien upon a *res* within the state. In holding that the situs of the claim upon the policy was here, the court emphasized that *the contract of insurance was made in New York state* as part of the business which the company was licensed to transact here. In Martine v. The International Life Insurance Society of London, 53 N. Y. 339, the statement that foreign corporations doing business here

"must be regarded as domiciled by the residence of its general agents and its local organization" was qualified by the preceding words "as to the business transacted here."

That the Attorney General recognizes that the statute is unconstitutional if applied to policies written outside the state seems evident from the fact that his brief contains a statement (p. 15) that the statute is not applicable "to policies written by a foreign branch of a foreign company, even though the policy be written on the life of a resident of this State." This statement does not, however, obviate passing upon the constitutionality of the statute, as applied to policies written outside the state, for two reasons. In the *first* place, there is nothing in the literal wording of the statute itself to indicate that it was intended to apply only to policies resulting from business done within the state. It does not follow that because the statute was restricted as to foreign companies, to those authorized to do business here, that its scope was intended to be limited to policies emanating from business done here by such companies. *Secondly*, and more important, the complaint alleges and it must be deemed true for the purposes of this [fol. 71] motion to dismiss, that (paragraph 25L) the Comptroller is attempting to enforce the statute even where "a policy may have been delivered in another State, and although a policy may have been applied for and obtained in another State." The Attorney General's brief does not dispute the claim that the Comptroller has been attempting to enforce the statute even as to policies having no relation to the companies' license to do business here, nor does it state that such efforts will cease. In the circumstances, plaintiffs are entitled to obtain a definite adjudication as to the validity of the statute and of the Comptroller's rights against them thereunder.

The Attorney General's contention, that plaintiffs are not aggrieved and cannot be heard to plead the alleged infringement of the constitutional rights of the insured or of beneficiaries under the policies, appears to overlook that, as previously pointed out, payment to the comptroller might subject plaintiffs to double liability, complete or partial. If they make payment to the Comptroller in compliance with the statute they will never have another opportunity to raise the question. The words of Chief Justice Stone in Anderson v. Luckett, *supra*, are pertinent here

(pp. 242-3): "But if the statute is deficient in its provisions for notice and opportunity for hearing so that the depositors would not be bound by any proceedings taken under it, the bank would be entitled to raise the question whether its obligations to the depositors would be discharged by payment of the deposits to the state."

The conclusion arrived at, that the statute is invalid in so far as it purports to apply to policies written outside of [fol. 72] the state by foreign companies, does not, however, necessarily require a holding that it is *entirely* void, i.e., even as to policies written in this state as part of the business which the foreign companies transact here pursuant to license. Thus in Mutual Life Ins. Co. of N. Y. v. Cohen, *supra*, a statute of New York that no life insurance company doing business in that state should have the power to declare forfeited or lapsed any policies thereafter issued or renewed, for nonpayment of premium or interest, unless a premium notice had been mailed as required by the statute, was held unconstitutional as to policies written by foreign companies outside the State of New York, but valid and enforceable as to policies written in New York by the domestic agencies of the foreign insurers. The statute in the cited case, like the one here involved, purported to apply to all insurance written by any company doing business here, without containing any limitation to the insurance written here. That the unconstitutionality of the application of part of the Abandoned Property Law should not affect the validity of the statute in other respects is expressly provided for in section 1501 of that statute: "If any *part*, provision or section of this chapter, *or the application of any such part*, provision or section *in any particular respect*, shall be adjudged by any court of competent jurisdiction to be unconstitutional or ineffective *in whole or in part*, such judgment shall be confined in its operation to the particular provision or section or *application* directly involved in the controversy in which such judgment shall have been rendered and shall not affect, impair or invalidate the remainder of such provisions or sections or their *ap*- [fol. 73] *plication* in other respects; and to the extent that such provisions or sections are not unconstitutional or ineffective, they shall remain in full force and effect."

It is necessary, therefore, to consider whether the Abandoned Property Law is constitutional in so far as it attempts to legislate with respect to claims on policies written by

domestic branches or agencies of foreign life insurance companies *in this state* on the lives of residents of this state. As to such policies it would seem that the foreign companies ought to be treated as domiciled in this state. In Morgan v. Mutual Benefit Ins. Co., *supra*, the Court of Appeals said (p. 454): "As to such a claim the insurance company should be treated as a domestic insurance company and as domiciled in this state. * * * Whenever a question as to the situs of a similar claim against an insurance company doing business in a state pursuant to the statutes thereof has been directly involved in this court or in the Federal courts, and it has been sought to uphold the situs of the claim *in the state where the contract was made*, it has been sustained." (In Martine v. The International Life Insurance Society of London, *supra*, the same court declared (p. 348): "*As to the business transacted here*, the company must be regarded as domiciled by the residence of its general agents and its local organization." (Italics supplied.)

The statement in plaintiffs' brief that (p. 44) "Morgan v. Mutual Benefit Life * * * seems to have been overruled by Hanna v. Stedman, 230 N. Y. 326," may, perhaps, be true where the question to be determined is whether there is such a *res* within this state as would justify service by [fol. 74] publication on a non-resident. [It is to be noted, however, that the holding in the *Hanna* case was merely that an action in equity for interpleader, in which no specific fund had been set aside, was an action *in personam* rather than an action *in rem*, while the action in the *Morgan* case was to declare and enforce a lien on a policy claim, and that the holdings may therefore not be necessarily inconsistent.] But the *Hanna* case can hardly be deemed authority for the proposition that the state where the contract of insurance was made is without jurisdiction to pass a statute such as the one here under consideration. The fact that the action of interpleader was held to be *in personam* rather than *in rem*, is no indication whatsoever that the court which decided the case would have held that New York State, where the main office of the insurance company was located, did not possess jurisdiction to compel a turnover to it of abandoned proceeds of the membership certificates. Indeed, the position of these very plaintiffs is that the situs of the amounts owing on the abandoned policies is "the

State in which the insurance company is incorporated" (plaintiffs' brief, p. 19). As applied to the facts of the *Hanna* case, this would mean that this state would have had jurisdiction to escheat the proceeds of the membership certificates there involved had they been abandoned. The determination that an action of interpleader was not *in rem* and that the courts of this state had no jurisdiction without personal service within the state therefore has no bearing whatever on the question as to which state would have had power to take custody of the proceeds of the certificates had they been deemed abandoned for lack of claim.

[fol. 75] As to policies *written or delivered in this state* by domestic agencies of foreign life insurance companies, the situation is, as heretofore pointed out, that the domicile of the debtor companies must be deemed to be in this state. In addition, the statute, by its terms, is applicable only to policies issued on the lives of New York residents. "A common sense appraisal of the requirements of justice and convenience in (the) particular conditions" (Severnoe Securities Corp. v. L. & L. Ins. Co., *supra*, p. 123) rules out the only other possible states, viz.; (1) the domiciles of those entitled to claim the proceeds of the policies, and (2) the states of incorporation of the foreign companies.

(1) The residences of those who might at any particular time be entitled to the proceeds of the policies (either as beneficiaries, assignees or otherwise), i.e., the creditors, are obviously scattered throughout the country and elsewhere, and, in the case of unclaimed funds, often if not almost always, unknown to the insurance companies. It would, therefore, be impracticable, to say the least, to adopt the doctrine that the states of the residences of the creditors are the ones possessing jurisdiction to compel the debtor companies to turn over to them unclaimed funds. This was apparently recognized by the United States Supreme Court in *Anderson National Bank v. Luckett, supra*, for the jurisdiction of Kentucky was upheld although the depositor-creditors included non-residents of the state. The court went so far as to hold that the sheriff's posting of notice on the bulletin board of the county in which the property was located was sufficient notice to all depositors, [fol. 76] considered in conjunction with the notice given by the passage of the statute and the taking over of the property by the state. Plaintiffs themselves oppose the use of the domiciles of those entitled to make claims on the

policies as the criterion of situs, urging that (Plff's brief, p. 19) "the only practical situs for the purpose of such a statute would be the state in which the insurance company is incorporated, because that is known, whereas the domicile of the missing policyholder, or beneficiary, or assignee, is unknown."

(2) The only other possible criterion for determining situs is the state of incorporation of the foreign insurance company. Where the policy is written or delivered in New York by a domestic branch or agency of a foreign insurance company, there seems to be no justification for ascribing the situs of the claim to the main office of the company in another state. The fact that the policies may require presentation of claims at the home offices, and that checks in payment are issued at the home offices, does not seem to be as potent or compelling a consideration, for the purposes of determining which state possesses jurisdiction, as the fact that the policies were writ-en and/or delivered in New York by New York agencies of the companies and insured the lives of New York residents. The court accordingly holds that *as to such policies* the legislature of the State of New York had jurisdiction to direct the companies to turn over to its custody claims deemed to have been abandoned. It follows that compliance with the legislative mandate as to said policies will not expose the companies to [fol. 77] the risk of double liability either as the result of suits brought by claimants or by reason of similar statutes of other states. Thus in Anderson National Bank v. Luckett, *supra*, the court said (p. 624): "Since the bank is a debtor to its depositor, it can interpose no due process or contract clause objection to payment of the claimed deposits to the state, *if the state is lawfully entitled to payment, for in that case* payment of the debt to the state, under the statute, relieves the bank of its liability to depositors."

The other grounds upon which plaintiffs attack the statute as unconstitutional are equally available to domestic insurance companies. Since the 1940 amendment, which restricted the scope of the 1939 statute to policies issued by domestic companies on the lives of residents of this state, no domestic company has questioned the validity of the statute. The various contentions of the plaintiffs will be now considered *seriatim*.

It is urged that until due proofs have been filed with the companies of the occurrence of the contingencies which make the policies payable (such as death of the insured or expiration of the term of an endowment policy) the persons entitled to the benefits of the policies possess at most "inchoate or potential choses in action." Paragraph (a) of subdivision 1 of section 700 requires the turnover of unclaimed amounts of *matured* endowment policies and paragraph (c) makes like provision as to policies on the lives of residents *who have died*. Clearly, as to such policies, the failure to file formal proofs with the companies is no different in principle than the failure to produce savings bank books, the production of which savings banks uniformly make a condi- [fol. 78] tion precedent of payment. Yet the United States Supreme Court has upheld the validity of statutes, similar to our Abandoned Property Law, which have been directed at savings banks (Provident Institution for Savings v. Malone, *supra;* Security Bank v. California, *supra*), notwithstanding the absence of any statutory requirement that the bank books be produced. The only other policies covered by the statute are those specified in paragraph (b), viz., where the insured, if living, would have reached the maximum age "of the Mortality Table" (this varies from about 96 to 100, according to the Table used). It would seem that as to the amounts of such policies there is ample basis for holding that the choses in action are no longer merely potential or inchoate, and for permitting a state to take over custody, not for itself, but for the benefit of the claimants if they should ever appear.

Plaintiffs further contend that they may possess all kinds of defenses to claims upon many of the policies and that it would be unconstitutional to deprive them of such defenses. The complaint fails, however, to state any facts showing the existence of any specific defense to any specific policy. *Certainly the fact that the companies may possess valid defenses to some of the policies does not render the statute unconstitutional, in so far as other policies are concerned to which there are no valid defenses.* It is probably true that the companies may possess certain defenses to some of the policies which it would be unconstitutional to take from them by compelling a turnover to the state of the amounts of the policies. The proper remedy of the com- [fol. 79] panies in such situations is to refuse to turn over the amounts of such policies, and, if deemed advisable, to

sue for declaratory judgments, alleging the appropriate facts in the complaint. It is to be noted that some defenses which the companies might be able to assert in suits brought against them on the policies may not be available to them as grounds for refusing to make a turnover to the state. Examples are defenses based on failure to file proofs of death, etc., and also, *perhaps*, defenses of the statute of limitations (see post).

Plaintiffs also argue that the statute in reality attempts to take from them their own property, since they possess no fund or *res* specifically set aside for each policy. It is sufficient answer to observe that in the case of savings banks and national banks no specific fund or *res* is set aside for each depositor and yet similar statutes directed at such banks have been held constitutional by the highest court of the land (see *supra*) on the theory that a state may take into its custody choses in action presumed to have been abandoned.

The contention that the statute is invalid because it "attempts to substitute the State of New York as insurer under these policies, regardless of the rights and wishes of the insurance companies and their policyholders" (plaintiffs' brief, p. 21) and that the statute therefore impairs the obligations of contracts is inconsistent with the Supreme Court decisions upholding similar statutes as to national banks and savings banks. Even the fact that the statute in Provident Institution for Savings v. Malone, *supra*, provided for the state's paying a lower rate of interest than that [fol. 80] payable by the plaintiff savings bank was held not to invalidate the enactment, the court declaring that it was not open to the bank to raise a question which only affected its depositors.

Plaintiffs make much of the fact that section 1400 of the Abandoned Property Law deprives them of the defense of the statute of limitations in cases where they would possess such defense in actions by claimants on the policies. Here again, the fact that as to some policies they might have a good defense based on the statute of limitations would not be ground for invalidating the Abandoned Property Law in respect of its application to cases where no such defense exists. Plaintiffs' proper remedy, to raise the question, is to allege the specific facts in suits for declaratory judgment confined to the specific policies as to which plaintiffs claim to have a good defense based on the statute of

limitations. It is unnecessary, for the purposes of the present motion, to determine whether the Attorney General is correct in his contention (for which he cites Margiotti v. Cunningham, 337 Pa. 289; State v. Marshall & Illsley Bank, 291 N. W. Rep. 361; 30 C. J. S. [2d] 1170, and other authorities) that the statute of limitations does not extinguish the debt but only the creditor's remedy, and that, therefore, escheat and similar statutes, which deal with the rights of the state, rather than those of the creditors, "are not rendered invalid by reason of the fact that the statute of limitations has run against the unknown depositor or person primarily entitled to the money or property." (30 C. J. S. [2d] 1170)

The contention is also made by plaintiffs that the statute violates the provision of section 19 of Article III of the [fol. 81] New York Constitution that "no claim against the State shall be audited, allowed or paid which, as between citizens of the State, would be barred by lapse of time." This provision obviously does not apply to the rights of claimants to funds taken into the state's *custody* for their benefit. The state under the statute does not take title to the abandoned funds. Furthermore, even if the claims were interpreted as being "against the State" within the meaning of the constitutional provision, the time would not commence to run in favor of the state until it obtained delivery of the funds. The purpose of the constitution is merely to assure that no longer statute of limitations will be enacted for claims against the state than those applicable to claims against citizens of the state.

Some mention is made in plaintiffs' brief of the expense of preparing reports and arranging advertising for which, it is claimed, the companies receive no compensation. No real point is made of this, however. Section 1409 provides that any amount paid to newspapers for any publication of names required by the statute shall be charged equally against all abandoned property held or owing at the time of the publication, except abandoned property of individual amounts of less than twenty-five dollars. The expense of preparing reports of abandoned claims, equally applicable to domestic and foreign corporations, is one which the state may impose without rendering the statute unconstitutional.

The claim made in the complaint that the statute consti-

tutes an unreasonable burden upon interstate commerce has been withdrawn.

[fol. 82] The motion for judgment on the pleadings dismissing the complaint is accordingly denied, in so far as the statute is claimed to be invalid as to policies written outside the state by foreign branches of foreign insurance companies, and otherwise granted.

Dated, September 30th, 1946.

J. A. G.
J. S. C.

STIPULATION WAIVING CERTIFICATION

It is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notice of appeal, the judgment appealed from the opinion of the Court below and all the papers upon which the Court below acted in making the judgment appealed from, and the whole thereof, now on file in the office of the Clerk of the County of New York.

Certification thereof pursuant to Section 616 of the Civil Practice Act is hereby waived.

Dated, November ——, 1946.

Ganson J. Baldwin, Attorney for Plaintiffs-Appellants; Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for Defendant-Respondent.

[fol. 83] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

ADDITION TO STATEMENT UNDER RULE 234

By an order made and entered on March 14, 1947, the Appellate Division of the Supreme Court, First Department, unanimously affirmed (without opinion) a judgment of the Supreme Court, New York County, and on March 19, 1947, a judgment of affirmance was entered thereon in the office of the Clerk of the County of New York. There has been no change of parties or attorneys.

[fol. 84] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

[Title omitted]

NOTICE OF APPEAL TO COURT OF APPEALS

Please take notice that the plaintiffs hereby appeal to the Court of Appeals from a judgment of affirmance, dated March 19, 1947, and entered herein in the office of the Clerk of the County of New York on March 19, 1947.

Dated: March 20, 1947.

Yours, etc., Ganson J. Baldwin, Attorney for Plaintiffs, 72 Wall Street, New York 5, N. Y.

To Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for Defendant, and Clerk of the County of New York.

[fol. 85] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION—FIRST DEPARTMENT

Present—Hon. Francis Martin, Presiding Justice, Hon. Edward J. Glennon, Hon. Edward S. Dore, Hon. Joseph M. Callahan, Hon. David W. Peck, Justices.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, NATIONAL LIFE INSURANCE COMPANY, PENN MUTUAL LIFE INSURANCE COMPANY, and PHOENIX MUTUAL LIFE INSURANCE COMPANY (Original Plaintiffs); and AETNA LIFE INSURANCE COMPANY, THE PRUDENTIAL LIFE INSURANCE COMPANY OF AMERICA, THE UNION MUTUAL LIFE INSURANCE COMPANY, and THE UNION LABOR LIFE INSURANCE COMPANY (Plaintiffs Added by Stipulation), Applts.,

vs.

FRANK C. MOORE, Comptroller of the State of New York, Respt.

ORDER OF AFFIRMANCE—March 14, 1947

An appeal having been taken to this Court by the plaintiffs from a judgment of the Supreme Court, New York County, entered on the 25th day of October, 1946, except in

so far as said judgment granted some of the relief prayed for in the complaint herein, and said appeal having been [fol. 86] argued by Mr. Ganson J. Baldwin of counsel for the appellants, and by Mr. Abe Wagman of counsel for the respondent; and due deliberation having been had thereon,

It is unanimously ordered and adjudged that the judgment so far as appealed from be and the same is hereby affirmed; and that the respondent recover of the appellants the costs of this appeal.

Enter,

(Signed) F. M.

In Supreme Court of New York, County of New York

The Connecticut Mutual Life Insurance Company, Massachusetts Mutual Life Insurance Company, National Life Insurance Company, Penn Mutual Life Insurance Company, and Phoenix Mutual Life Insurance Company (Original Plaintiffs); and Aetna Life Insurance Company, The Prudential Life Insurance Company of America, The Union Mutual Life Insurance Company, and The Union Labor Life Insurance Company (Plaintiffs Added by Stipulation), Plaintiffs-Appellants,

against

Frank C. Moore, Comptroller of the State of New York, Defendant-Respondent

Judgment of Affirmance

The plaintiffs above named having appealed to the Supreme Court, Appellate Division, First Judicial Depart- [fol. 87] ment, from the judgment entered in this action on the 25th day of October, 1946, in the office of the Clerk of the County of New York, and the appeal having been heard at a Term of said Appellate Division on the 26th day of February, 1947, and an order of said Appellate Division having been made and entered, affirming said judgment in so far as appealed from, with costs of said appeal to the respondent, all of the Justices concurring,

Now, On Motion of Nathaniel L. Goldstein, Attorney General of the State of New York, attorney for the respondent, it is hereby

Adjudged that said judgment, in so far as appealed from, be and the same hereby is affirmed.

Archibald R. Watson, Clerk.

Dated March 19, 1947.

Costs paid and waived.

March 19, 1947.

Nathaniel L. Goldstein, Attorney General, by: Abe Wagman, Ass't Atty. Gen.

[fol. 88] In Supreme Court of New York, Appellate Division—First Department

Present: Hon. Francis Martin, Presiding Justice; Hon. Edward J. Glennon, Hon. Edward S. Dore, Hon. Joseph M. Callahan, Hon. David W. Peck, Justices.

[Title omitted]

Order Certifying That a Constitutional Question Is Directly Involved—March 19, 1947

Pursuant to Section 593 of the Civil Practice Act, it is hereby certified that a constitutional question is directly involved in this action and in the appeal herein.

Enter:

F. M.,

P. J.

[fol. 89] Affidavit of No Opinon in the Appellate Division

State of New York,
County of New York, ss:

Ganson J. Baldwin, being duly sworn, deposes and says:

That he is attorney for the plaintiffs-appellants and is familiar with the proceedings herein. That upon the affirmance of the judgment by the Appellate Division, First Department, no opinion was handed down by said Appellate Division.

Ganson J. Baldwin,

Sworn to before me this 20th day of March, 1947. Catherine Marie Lovrich, Notary Public. Kings Co. No. 579, Reg. No. 210-L-7. Cert. filed in N. Y. Co., No. 667, Reg. No. 492-L-7. Commission expires March 30, 1947.

[fol. 90] STIPULATION WAIVING CERTIFICATION

It is hereby stipulated and agreed, by and between the attorneys for the respective parties hereto, that the foregoing consists of true and correct copies of: The record on appeal to the Appellate Division, First Department, the order of affirmance, the judgment of affirmance, the notice of appeal to the Court of Appeals, all of which are now on file in the office of the Clerk of the County of New York, and the order of the Appellate Division, First Department, certifying, pursuant to Section 593 of the Civil Practice Act, that a constitutional question is directly involved.

Certification of the foregoing papers is hereby waived.

Dated, New York, March 24, 1947.

Ganson J. Baldwin, Attorney for Plaintiffs-Appellants; Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for Defendant-Respondent.

[fol. 91] IN COURT OF APPEALS OF NEW YORK

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 2nd day of July in the year of our Lord one thousand nine hundred and forty-seven, before the Judges of said Court.

Witness, The Hon. John T. Loughran, Chief Judge, Presiding; John Ludden, Clerk.

REMITTITUR—July 2, 1947

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY & ORS., Appellants,

ag'st

FRANK C. MOORE, Comptroller of the State of New York, Respondent

Be It Remembered, That on the 26th day of March in the year of our Lord one thousand nine hundred and forty-seven, The Connecticut Mutual Life Insurance Company and others, the appellants in this cause, came here unto the

Court of Appeals, by Ganson J. Baldwin their attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Frank C. Moore, Comptroller of the State of [fol. 92] New York, the respondent in said cause, afterwards appeared in said Court of Appeals by Nathaniel L. Goldstein, Attorney General.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Ganson J. Baldwin of counsel for the appellants, and by Mr. Abe. Wagman of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgments herein be and the same hereby are modified in accordance with the opinion herein and, as so modified, affirmed with costs to the defendant State Comptroller.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgments be modified in accordance with the opinion herein and, as so modified, affirmed, etc., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according [fol. 93] to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, etc.

(S.) John Ludden, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE

Albany, July 2, 1947.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

(S.) John Ludden, Clerk. (Seal of the Court of Appeals.)

[fol. 94] IN COURT OF APPEALS OF NEW YORK

No. 122

THE CONNECTICUT MUTUAL LIFE INSURANCE CO., et al.,
Plaintiffs-Appellants,

against

FRANK C. MOORE, Comptroller of the State of New York,
Defendant-Respondent

OPINION

LOUGHRAN, Ch. J.:

This case presents questions as to the validity of the New York Abandoned Property Law (Cons. Laws. Ch. 1) in its application to unclaimed life insurance funds.

The gist of the relevant operative sections of the statute is as follows. Abandoned property includes any moneys, held or owing by any life insurance company which have remained unclaimed for seven years by the person or persons entitled thereto under (1) matured life insurance policies on the endowment plan issued on the lives of residents of this State; (2) other kinds of life insurance policies issued on the lives of residents of this State, where the insured, if living, would have attained the limiting age under the mortality table on which the reserves are based; (3) life insurance policies issued on the lives of residents of this State who have died. (Sec. 700). On or before April first in each year, every life insurance corporation shall make a verified written report to the State Comptroller of all such abandoned property held or owing by it. (Sec. 701). Within thirty days thereafter such corporation shall publish a newspaper notice to the persons appearing to be

entitled to any of such unclaimed moneys together with a statement (1) that a list of the names of such persons is on [fol. 95] file and open to public inspection at the principal office of the corporation; (2) that payment of such unclaimed moneys will be made on or before the succeeding August thirty-first, to persons establishing their right thereto; and (3) that in the succeeding September such unclaimed moneys still remaining will be paid to the State Comptroller, after which the insurance corporation shall cease to be liable therefor. (Sec. 702). Such payment shall be made to the State Comptroller at the time so fixed (Sec. 703). Thereupon the care and custody of such property shall pass to the State, the State shall be responsible for all claims established thereto pursuant to law less any lawful deductions, and the insurance corporation shall be relieved of liability for any such claim (Sec. 1404).* The State Comptroller shall publish annual statements of abandoned property received by him and not paid to claimants (Sec. 1402). Claims may be filed with him for such property and his determination thereof shall be subject to review in the courts (Sec. 1406). The statute shall be enforced notwithstanding the bar of any statute of limitations (Sec. 1400).

Whether these parts of the statute should be declared unconstitutional is the question for decision. The plaintiffs are a number of foreign life insurance companies that are licensed to do business in this State. The State Comptroller is the defendant. Upon motions made by all parties for a decision on the pleadings, Special Term annulled the Statute in so far as it pertains to policies of life insur- [fol. 96] ance issued for delivery outside the State of New York, but upheld the challenged provisions in all other respects, except that the court put aside an issue as to the unlawful operation thereof upon defenses that life companies may have to claims upon their insurance contracts. From

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* Section 707, added by L. 1946, ch. 452, further provides: "Any life insurance corporation which has paid to the state comptroller moneys deemed abandoned property pursuant to the provisions of this article may make payment to any person entitled to all or any part thereof and shall thereby acquire all of the rights of such person to payment by the state comptroller."

so much of the judgment of Special Term as denied relief prayed for by them, the plaintiff companies appealed to the Appellate Division, and, when a unanimous affirmance followed, they brought the case to this Court as of right on the basis of the constitutional questions that are directly involved. Since the defendant State Comptroller has at all times been content with the decision of Special Term, we are here concerned only with the effect of the statute upon presumptively abandoned proceeds of insurance policies issued upon the lives of residents of this State and delivered within its borders by companies doing business here, and what follows has reference to policies so issued and delivered and to no others.

Each of the plaintiff companies has its home office outside this State. By his motion for judgment on the pleadings, the defendant State Comptroller constructively admits the following allegations of the complaint: "The business of the plaintiffs, and other life insurance companies, is conducted from their Home Offices, where their officers, records, and securities are situated. Applications for policies are obtained by agents throughout the United States, and are sent to the Home Offices for consideration, and, if approved, the policies are written at the Home Offices and are sent to the agents for delivery to the applicant. Premiums are payable at the Home Offices, or, if paid to an agent, are forwarded to the Home Offices. Claims under policies must be made at the Home Offices, under the terms of the policies, [fol. 97] which provide that upon receipt at the Home Office of 'due proof' of death, or other event, the company will pay, etc., and all claims are considered at the Home Offices, and, if allowed pursuant to the terms of the policies, are paid by checks drawn at the Home Offices." On the strength of the above circumstances, the plaintiff companies insist that their debtor obligations under the contracts in question are beyond the territorial reach of the power of the New York Legislature.

Other defects imputed to the statute by the companies may be summarized in this manner: it cancels provisions of insurance contracts whereby the proceeds become payable only upon filing of due proof of specified events, e.g., death, age, survival, and upon surrender of the policy; it takes away defenses to policies, e.g., misrepresentation and breach of conditions; if given retrospective effect, it will operate

to revive claims which at the time of its enactment were barred by the statute of limitations. In the foregoing aspects, the statute, as the plaintiff companies see it, is not only repugnant to the due process clauses, but also impairs the obligation of contracts, takes private property for public use without making just compensation therefor and runs foul of the fundamental demand for the equal protection of equal laws. (U. S. Const. Art I, Sec. 10 and 14th Amendment; N. Y. Const. Art. I, Secs. 6, 7a).

The reason of the statute is plain enough. Section 102 says: "It is hereby declared to be the policy of the state, while protecting the interest of the owners thereof, to utilize escheated lands and unclaimed property for the benefit of all the people of the state, and this chapter shall be liberally construed to accomplish such purpose." (See *Moufang* v. *State of New York*, 295 N. Y. 121, 127-128). In accordance [fol. 98] with the object first so stated, the Legislature has substituted the State for the plaintiff companies as debtor upon the policies in question and at the same time has secured to the policy-creditors appropriate notice thereof with an opportunity to be heard and with the further right to resort to the courts should payment by the State be refused. Such a statutory scheme fulfills the procedural requirements of due process (*Anderson National Bank* v. *Luckett*, 321 U. S. 233).

In the case just cited—where approval was given to a like scheme for State administration of abandoned bank deposits remaining in a national bank within the State—the Court said: "The deposits are debtor obligations of the bank, incurred and to be performed in the state where the bank is located, and hence are subject to the state's dominion" (321 U. S. at p. 233). Here the circumstances relied upon as a justification for the exercise of State power are not essentially different. True, the policies in question were committed to writing at the home offices of the plaintiff companies in foreign states and were to be paid by checks mailed therefrom. But the policies were issued upon the lives of residents of this State and were delivered within its borders by corporations doing business therein. "Effectiveness of a policy (as the complaint says) usually depends upon its being 'delivered and the first premium paid during the lifetime and good health of the insured,' a provision which is usually contained in the policies or in the application for insurance, copies of which are attached to policies

when issued and made a part thereof." Thus the State of New York—where the policies were delivered and where presumably the first premiums *was* paid—was the place where the contracts in question were made. (*Northwestern Life Ins. Co.* v. *McCue*, 223 U. S. 234; *U. S. Mortgage &* [fol. 99] *Trust Co.* v. *Ruggles*, 258 N. Y. 32, 38; Restatement of Conflict of Laws, Sec. 318). On the whole, then, it makes no difference where the policies were signed or where payment thereof was to be initiated. For the core of the debtor obligations of the plaintiff companies was created through acts done in this State under the protection of its laws and the ties thereby established between the companies and the State were without more sufficient to validate the jurisdiction here asserted by the Legislature. (See *Curry* v. *McCanless*, 307 U. S. 357; *Hoopeston Co.* v. *Cullen*, 318 U. S. 313; *International Shoe Company* v. *Washington*, 326 U. S. 310. Cf. *Prudential Ins. Co.* v. *Benjamin*, 328 U. S. 408; *Harris* v. *Balk*, 198 U. S. 215; *Morris Plan Industrial Bank of New York* v. *Cunning*, 295 N. Y. 324; *Feinman* v. *Marks*, 294 N. Y. 367).

The contention that the statute unwarrantably rescinds contractual conditions precedent such as the requirements of surrender of policies and filing of due proof of death or other specified events was rejected by the Special Term on the authority of *Provident Institution for Savings* v. *Malone* (221 U. S. 660),—a case which sustained a statute whereby banks were commanded to pay over unclaimed deposits to a State without production of pass-books as required by agreements of deposit. The cited case is quite in point. Besides the present statute calls upon the plaintiff companies to surrender moneys to this State only after maturity of the policy obligations and at a time when the State, as the then legal representative of the parties entitled to such payment, may be regarded as making demand therefor in their behalf.

"If the statute is retroactive", says the plaintiff companies, "it illegally attempts to revive claims barred by the statute of limitation." On its face, the statute appears to have been meant for retrospective application, seeing that it [fol. 100] became law on April 23, 1943, but did not take effect until June 1, 1944 (L. 1943 Vol. 1, pp. 1383 and 1415), and that the reports of abandoned property called for by section 701 must be made on or before the first day of April

"in each year." Furthermore, the clearly procedural character of the statute is reason enough for giving it a retrospective application (*Shielcrawt* v. *Moffett*, 294 N. Y. 181, 188); and if abandoned claims are to be revived thereby, this will be no offense against constitutional law. (*Chase Securities Corp.* v. *Donaldson*, 325 U. S. 304, 316; *Matter of New York University (Moore)*, 296 N. Y. 913).

As has already been indicated, the court at Special Term did not decide whether or not the statute illegally deprives the plaintiff companies of defenses to claims upon their insurance contracts. We see no reason why that issue should go undetermined (Cf. *Quaker Oats Co.* v. *City of New York*, 295 N. Y. 527, 538). The plaintiff companies, as we have said, cannot resist payment to the defendant Comptroller because of (1) the statute of limitations or (2) non-compliance with policy provisions calling for due proof of death or of other designated contingency or (3) failure to surrender a policy. Except for these restrictions, however, the statute (Sec. 700) leaves any of the plaintiff companies wholly free to set up any complete or partial defense whereby it may establish that no moneys are "held or owing" by it on a particular policy, or that only some fraction of the face amount of the contract is payable thereon. Maybe, as the companies say, they cannot effectually prepare possible defenses without a proof of claim, but inconvenience of that kind does not nullify the statute. Accordingly paragraph 3 of the judgment of Special Term—which reserved decision on the question whether the statute wrongfully does away with defenses to policies—should be struck out.

As so modified, the judgments should be affirmed, with costs to the defendant State Comptroller.

[fol. 101] IN SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

Present:

HON. FELIX C. BENUANGA, *Justice.*

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, National Life Insurance Company, Penn Mutual Life Insurance Company, and Phoenix Mutual Life Insurance Company (Original Plaintiffs); and Aetna Life Insurance Company, The Prudential Life Insurance Company of America, The Union Mutual Life Insurance Company, and The Union Labor Life Insurance Company (Plaintiffs Added by Stipulation), Plaintiffs-Appellants,

against

FRANK C. MOORE, Comptroller of the State of New York, Defendant-Respondent.

ORDER ON REMITTITUR—July 24, 1947

The above mentioned plaintiffs-appellants having appealed to the Court of Appeals from the judgment of affirmance of this Court entered upon the order of the Appellate Division of the Supreme Court, First Department, in the Office of the Clerk of the County of New York, on the 19th day of March, 1947, affirming the judgment heretofore entered in the Office of said Clerk on the 25th day of October, [fol. 102] 1946, in so far as appealed from; and the said appeal having been duly argued at the said Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the said judgment so appealed from as aforesaid be modified in accordance with the opinion rendered by the said Court of Appeals, and, as so modified, be affirmed with costs to the defendant State Comptroller; now

Upon reading and filing the remittitur from the said Court of Appeals herein, and upon motion of Nathaniel L. Goldstein, Attorney General of the State of New York, attorney for the defendant State Comptroller herein, it is hereby

Ordered that the said judgment of the Court of Appeals be, and the same hereby is, made the judgment of this Court.

Enter. (Initialed) F. C. B. J. S. C.

[fol. 103] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

Petition for Appeal, Assignment of Errors and Prayer for Reversal

To the Honorable John T. Loughran, Chief Judge of the Court of Appeals of the State of New York:

PETITION FOR APPEAL.

Considering themselves aggrieved by the final judgment, dated July 2, 1947 in the above-entitled action, of the Court of Appeals of the State of New York, which is the highest Court of that State in which a decision could be had in this action, where is drawn in question the validity of the statute known as the Abandoned Property Law of the State of New York, as amended, particularly Chapters 498 (Sec. 2) and 497 of the Laws of 1944 of the State of New York, and the statute which they amend, Chapter 697 of the Laws of 1943 of the State of New York, on the ground of its being repugnant to Article I, Sec. 10 of the Constitution of the United [fol. 104] States and the Fourteenth Amendment thereto, and said judgment being in favor of its validity, the plaintiffs herein hereby pray that an appeal may be allowed to the Supreme Court of the United States from said judgment, for the reasons specified in the Assignment of Errors submitted herewith; and that an order be made in regard to the appeal bond to be given by the plaintiffs; and that a citation be issued as provided by law; and that the material parts of the record, proceedings and papers upon which said judgment was based, duly authenticated, be sent to the Supreme Court of the United States pursuant to the rules thereof.

ASSIGNMENT OF ERRORS.

The plaintiffs, the appellants, assign the following errors in the record and proceedings upon which they will rely upon their appeal to the Supreme Court of the United States:

1. The Court of Appeals of the State of New York erred in holding that the statute known as the Abandoned Property Law of the State of New York, as amended, particularly Chapters 498 (Sec. 2) and 497 of the Laws of 1944 of the

State of New York, and the statute which they amend, Chapter 697 of the Laws of 1943 of the State of New York, is valid and is not repugnant to the provisions of Article I, Sec. 10, of the Constitution of the United States, that "No State shall * * * pass any * * * Law impairing the Obligation of Contracts * * *", although said statute, as construed by said Court of Appeals, provides that the plaintiffs, which are life insurance corporations incorporated in other States, must pay to the State of New York (as or in the nature of an escheat) the sums specified in the policies [fol. 105] of life insurance and endowment policies, issued by the plaintiffs, and described in the Complaint, and must make reports and newspaper publications offering and promising payment and admitting liability, all contrary to and without performance of the terms of the policies, as set forth in the Complaint, particularly:

(a) the provisions that the furnishing of due proofs of death, or other event, to the plaintiffs is a condition precedent to liability and to payment thereunder, it being conceded that no proofs of any kind have been furnished; and

(b) the provisions that if the age of the insured was understated, as concededly it frequently is, the amount of insurance under the terms of said policies shall be reduced to the amount which the premium would have purchased at the correct age, it being conceded that it is impossible to know or determine the correct amount unless and until due proofs are submitted as required by the terms of the policies; and

(c) the provisions excluding or reducing liability in case of suicide, or of death caused by war, or military service, or aviation, or if the insured was not living and in good health when the policy was delivered and the first premium paid, it being conceded that it is impossible to know or determine the amount of liability, if any, unless and until due proofs are furnished as required by the terms of the policies.

2. Said Court of Appeals erred in holding that said statute is valid and is not repugnant to the Fourteenth Amendment to the Constitution of the United States providing that "* * * Nor shall any State deprive any person of * * * property, without due process of law * * *",

although said statute, as construed by said Court of Ap- [fol. 106] peals, requires the plaintiffs to make said payments, reports and publications, described in paragraph "1" hereof:

(a) contrary to and without performance of the policy provisions described in paragraphs "1(a), 1(b) and 1(c)" hereof; and

(b) even though many defenses, total or partial, may exist to any claims which could arise under the policies, particularly defenses based upon the provisions described in paragraphs "1(a), 1(b) and 1(c)" hereof, and also defenses based upon fraud, misrepresentation, impersonation, fictitious insureds, and other frauds, it being concededly impossible to determine what defenses may apply unless and until due proof of death, or other event, is furnished as required by the terms of the policies; and

(c) even though plaintiffs are thereby deprived of all right and opportunity to receive, consider and investigate claims under said policies, and to reject or resist unjust or fraudulent claims, or to adjust doubtful claims; and

(d) even though the amounts which might become payable, if anything, under said policies is entirely speculative, and the facts essential to determining the same are entirely unknown; and

(e) even though the assets and reserves of the plaintiffs are their general property in which they have the beneficial ownership, and are not deposits or trust funds and are not ear-marked or held under or for any particular policy; and

(f) even though the effect and result is that the State of New York virtually liquidates and takes over this part of the plaintiffs' business and assets, and [fol. 107] deprives them of their property and of the right to conduct such business as authorized by their charters granted by the States in which they are incorporated; and

(g) Even though the State of New York has no jurisdiction to compel such payments and other acts (in the nature of escheat) in regard to any such policies,

the proper jurisdiction (if any debts exist thereunder) being in the State of incorporation (the domicile) of the insurance company which issued the policies.

3. Said Court of Appeals erred in holding that such policies or the face amounts thereof are matured and represent "unclaimed life insurance funds" and "debtor obligations" susceptible to escheat, and subject to the jurisdiction of the State of New York for such purpose, or a taking of that nature, and in sustaining the validity of the statute for that purpose, in that said holdings have no support in the record and are contrary to the conceded facts (mentioned briefly in these Assignments of Errors but more fully stated in the Complaint), and said holdings and statute are repugnant to Article I, Sec. 10, of the Constitution of the United States, and the Fourteenth Amendment thereto, in that they impair the obligations of said contracts and deprive plaintiffs of their property without due process of law.

4. If (contrary to the plaintiffs' contentions) any sums are to be deemed held or owing under such policies, said Court of Appeals nevertheless erred in holding that the State of New York has jurisdiction to take the same by said statute as an escheat, or otherwise, in view of the conceded facts that the State of incorporation of each of the plaintiffs, not the State of New York, is the place where they are payable, and where all claims must be made, where [fol. 108] the assets of the insurance company are located, where premiums are payable, where claims are paid and policy loans made, where the officials and records of the company are located, and where all other business relating to the policies is transacted, other than the solicitation of insurance and delivery of policies by local agents in various States, as more fully set forth in the Complaint; and that the whereabouts or domiciles of the holders of these "abandoned" policies are unknown; and that every year many thousands of policyholders move from one State to another; and that the residences of the insureds at the time that the policies were issued and also the place of delivery thereof (the factors upon which said Court holds the State of New York has jurisdiction) are unknown and impossible to determine and would always be uncertain and impractical factors (and the plaintiffs claim that such factors are of no legal or practical materiality in deter-

mining situs and jurisdiction for the purpose of escheat); and therefore the statute and the holding of said Court are repugnant to the Fourteenth Amendment to the Constitution of the United States in that they deprive the plaintiffs of their property without due proces of law and expose them to full liability under the same policies to the State of New York and to the State having jurisdiction, and to the policyholders who may sue in any State.

5. Said Court of Appeals erred in affirming, as modified, and in failing to reverse, the judgments and orders of the lower courts of the State of New York, to wit, the judgment of affirmance of the Supreme Court of the State of New York dated March 19, 1947, entered upon the order of affirmance dated March 14, 1947, of the Appellate Division, First Department, of said Supreme Court, which judgment [fol. 109] and order affirmed the judgment of the Supreme Court of the State of New York, for the County of New York, the court of first instance, dated October 24, 1946, and said Court of Appeals erred in failing to declare said statute to be entirely void in its application to foreign life insurance companies and to said policies issued by them, and in so doing erred in rejecting the plaintiffs' contentions that said statute is repugnant to Article I, Sec. 10, of the Constitution of the United States, and the Fourteenth Amendment thereto, in that it impairs the obligations of said contracts and takes the plaintiffs' property without due process of law, under the facts set forth in the Complaint, all of which are conceded, and for the reasons therein stated.

PRAYER FOR REVERSAL

Wherefore, your petitioners pray that the said final judgment of the Court of Appeals of the State of New York made and dated July 2, 1947, be reversed with directions to reverse the judgment of the Supreme Court of the State of New York, County of New York, dated October 24, 1946, and to reverse the order of affirmance of said judgment by the Appellate Division, First Department, of said Supreme Court dated March 14, 1947, and to reverse the judgment of affirmance dated March 19, 1947, entered in said Supreme Court, New York County, upon said order of affirmance, and said statute should be declared to be entirely void in its application to foreign life insurance companies in that it

is repugnant to said provisions of the Constitution of the United States, and its enforcement should be enjoined accordingly.

Dated: August 15, 1947.

Ganson J. Baldwin, Attorney for Plaintiffs-Appellants, 72 Wall Street, New York, 5, N. Y.

[fol. 110] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

The plaintiffs-appellants named above having presented their Petition for Appeal, praying that they be permitted to take an appeal to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of New York, made and dated July 2, 1947, in the above-entitled cause, and having also made and presented with said petition their Assignment of Errors and Prayer for Reversal, and their Statement as to Jurisdiction; it is hereby

Ordered that said appeal be, and the same hereby is, allowed as prayed for; and it is further

Ordered that said plaintiffs-appellants shall give good and sufficient surety in the sum of $500 that they shall prosecute their appeal to effect, and, if they fail to make their plea good, shall answer all damages and costs, and said plaintiffs-appellants now presenting a surety bond to [fols. 111-112] such effect, such bond is hereby approved; and it is further

Ordered that this order and said bond and the papers hereinbefore referred to, namely, said Petition for Appeal, Assignment of Errors and Prayer for Reversal and Statement as to Jurisdiction, shall be filed by the Clerk of the Supreme Court of the State of New York for the County of New York with the record of this cause, and that said Clerk shall prepare and certify the transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within forty (40) days from the date hereof, the papers to be so certified

and transmitted to be such as may be stipulated by the parties or designated by Praecipe pursuant to the rules of the Supreme Court of the United States.

Dated: August 15, 1947.

John T. Loughran, Chief Judge of the Court of Appeals of the State of New York.

[fols. 113-114] Citation in usual form omitted in printing.

[fol. 115] In Supreme Court of the United States

[Title omitted]

Praecipe for Transcript of Record

To the Clerk of the Supreme Court of the State of New York, County of New York:

In connection with the preparation of the transcript of record on appeal herein the appellants request that you prepare and include as part of such transcript the following and certify the same to the Supreme Court of the United States:

1. All of the papers included in the printed Record on Appeal to the Court of Appeals of the State of New York.
2. Remittitur (Judgment) of the Court of Appeals dated July 2, 1947, and the Opinion attached thereto.
3. Order dated July 24, 1947, making the judgment of the Court of Appeals the judgment of the Supreme Court of the State of New York, County of New York.
4. Petition for Appeal, Assignment of Errors and Prayer for Reversal.
5. Order Allowing Appeal.

[fol. 116] 6. Statement as to Jurisdiction.

7. Notice Calling Attention to Rule 12(3).
8. Citation on Appeal.
9. Appeal Bond.
10. This Praecipe.

Dated: August 18, 1947.

Ganson J. Baldwin, Attorney for Appellants, 72 Wall Street, New York 5, N. Y.

ACKNOWLEDGEMENT OF SERVICE

The defendant-appellee by the undersigned, his attorney, hereby acknowledges service of the papers listed in the foregoing Praecipe as items 4, 5, 6, 7, 8, 9, and 10.

August 18, 1947.

Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for Defendant-Appellee, 80 Centre Street, New York 13, N. Y.

[fols. 117-119] Bond on appeal for $500.00, approved Aug. 15, 1947, omitted in printing.

[fols. 120-121] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 122] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD—Filed September 8, 1947

Appellants, pursuant to the provisions of Paragraph 9 of Rule 13 of the Rules of the Supreme Court of the United States, state that the points upon which they intend to rely in said Court in this case are as follows:

1. Appellants hereby adopt their Assignment of Errors as and for their Statement of Points upon which they intend to rely in this case.

Appellants hereby designate for the record in this case each and every paper enumerated in their Praecipe dated August 18, 1947, as necessary for the consideration thereof.

Dated: August 18, 1947.

Ganson J. Baldwin, Attorney for Appellants, 72 Wall Street, New York 5, N. Y.

[fol. 122a] [File endorsement omitted.]

[fol. 123] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 20, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: File No. 52567. New York Court of Appeals. Term No. 337. The Connecticut Mutual Life Insurance Company, Massachusetts Mutual Life Insurance Company, National Life Insurance Company, et al., Appellants, vs. Frank C. Moore, Comptroller of the State of New York. Filed September 9, 1947. Term No. 337, O. T. 1947.